

AGRICULTURE

DIVISION OF ANIMAL HEALTH

Humane Treatment Of Domestic Livestock

Adopted New Rules: N.J.A.C. 2:8

Proposed: May 5, 2003 at 35 N.J.R. 1873 (a)

Adopted: April 22, 2004 by State Board of Agriculture and Charles M. Kuperus,
Secretary

Filed: May 4, 2004 as R. 2004 d. 205, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3) and with the following provisions not adopted N.J.A.C 2:8-2.2 (b)4iv, 3.7(a)2, 3.7(a)3, 4.8(a)3, 5.5(g), 5.8(a)2, 5.8(a)3 and 7.2(c)1i and with the N.J.A.C. 2:8-8.4(e)1 not adopted at this time but is still pending.

Authority: N.J.S.A 4:22-16.1

Effective Date: June 7, 2004

Expiration Date: June 7, 2009

Summary of Hearing Officer's Recommendations and Agency Responses:

Michelle Warner Hammel, Legal and Legislative Affairs Specialist for the Department of Agriculture, served as the Hearing Officer at the June 20, 2003 public hearing held at Rutgers, Cook Campus Center in New Brunswick. The Department held this public hearing for purposes of receiving public comment on proposed new rules N.J.A.C. 2:8. The comment period for the proposal closed on July 4, 2003. Comments received by the Department are summarized and

responded to below. Sixty-five people appeared in person to testify. In addition, one person who had a scheduled hearing time was unable to attend and submitted a written statement, which was read into the record by the hearing officer. Fifteen people who were assigned hearing times either cancelled after scheduling or did not show up to provide testimony. Thirty-nine people testified in favor of the proposed new rules. Twenty-two people testified against the proposed new rules. Five people neither expressed support or opposition to the proposed new rules. The hearing officer has recommended that the Department adopt the proposed new rules with no substantive changes. The Department has accepted the Hearing Officer's Recommendations which are set forth in the Hearing Officer's report. However, based upon written comments received, the Department is making some changes to the proposal as described in the Summary of Public Comments and Agency Responses and the Summary of Agency-Initiated Changes below. A record of the public hearing is available for inspection in accordance with applicable law by contacting:

Department of Agriculture

P.O. Box 330

Trenton, NJ 08625-0330

Attn: Jack Gallagher, Records Custodian

Summary of Public Comments and Agency Responses:

In 1995, the Legislature directed the New Jersey State Board of Agriculture and the Department of Agriculture, in consultation with the New

Jersey Agricultural Experiment Station, to develop and adopt 1) standards for the humane raising, keeping, care, treatment, marketing and sale of domestic livestock, and 2) rules and regulations governing enforcement of those standards. P.L. 1995, c. 311. While the Legislature directed that the regulations be adopted within six months, the enormity of the task, when coupled with the Department's competing obligations (including addressing issues related to West Nile Virus, Foot and Mouth disease, anthrax, and ultimately post 9/11 terrorism concerns), delayed the proposal until the Spring of 2003.

The proposal, as it appeared in the May 5, 2003 New Jersey Register (35 N.J.R. 1873(a)), reflected the culmination of consultations with the New Agricultural Experiment Station, as well as with other academicians, the New Jersey Society for Cruelty to Animals, veterinarians, Department staff, extension agents, producers, and allied industries. The rules were also developed with consideration of the Department's overarching mission as reflected in Governor James McGreevey's statement to Charles M. Kuperus, Secretary of Agriculture: "My charge to Charlie is clear – preserve our farms, fight for our farmers, and ensure that our agricultural industry is profitable and strong, innovative, and poised for a bright future." The rule proposal was designed to meet the complementary objectives of developing standards to protect animals from inhumane treatment and the charge and fostering industry sustainability and growth.

As reflected in the prefatory language, the rules proposed:

to establish the minimum level of care that can be considered to be humane. The standards in these rules are not best management practices, which generally are high industry standards many responsible farmers meet or exceed. Instead, the standards are intended to serve as the baseline for determining inhumane treatment, ensuring that any act or procedure that falls below these standards can be accurately identified and swiftly addressed by all applicable law enforcement entities under N.J.S.A. 4:22-1 et seq.

The Department conducted a public hearing on June 20, 2003. In addition to comments received at that hearing, which are reflected in the Hearing Officer's Report, the Department received 6,576 written comments (most of which were form letters) both supporting and opposing the rules. The State Board of Agriculture and the Department have now reviewed and responded to those comments. From that exercise, it is clear that there are many persons who support the rules and many persons with sincerely held beliefs who oppose animal agriculture in its entirety, or who object to particular farming methods or practices. The Board and the Department recognize the right of those persons to object to and/or advocate for changes to animal agriculture practices. The Board and the Department, however, and as more fully explained in specific responses, are confident that the rules, as adopted, and as proposed to be amended elsewhere in this issue of the New Jersey, have set the appropriate standard for humane treatment of domestic livestock in this State at this time.

The Board and the Department commit themselves to ongoing review of scientific literature, veterinary school, land grant colleges, and agricultural extension curricula, and other pertinent scientific studies to ensure that New Jersey's standards continue to reflect practices supported by science and as informed by animal welfare concerns.

Adoption of these rules will provide livestock owners with a clear understanding of their responsibilities as to raising, keeping, care, treatment, marketing and sale of their animals. Further, these rules will provide law enforcement authorities and the State and county SPCAs with appropriate guidance as to standards for humane treatment. As those entities enforce the State's animal cruelty laws, their cooperation with the Department will enhance the ability of the State to ensure that diseases (or threats of disease) will be identified quickly and appropriate action taken to prevent the transmission of those diseases which could harm the public or other animals. The Department is confident its efforts have met the legislative intent and will benefit the public, livestock, and producers.

The Department has organized the comments received, first responding to each section and then to general comments. Comments raising the same concern or issue have frequently been combined. At times, the commenter's language has been repeated as submitted. Changes to the rules, whether non-substantive and made on adoption, as proposed to be an amendment to the rules, or provisions not adopted, are addressed in particular sections. In accordance with N.J.S.A. 52:14B-7(c), the Office of Administrative Law has determined not to publish the

names of the commenters in this notice of adoption. A list of the commenters' names may be reviewed at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey, by contacting (609) 588-6606, and will be retained by the Office of Administrative Law as part of the permanent file on this rulemaking.

Comments on Prefatory Language:

COMMENT: The rules, by codifying the lowest common denominator of agricultural production, betray consumers' expectations that the State's animals will be treated humanely.

RESPONSE: The Department, in consultation with the New Jersey Agricultural Experiment Station, and after reviewing scientific literature, developed baseline standards for humane treatment of livestock. Persons who fail to meet these standards are subject to penalty. Owners may choose to employ other or best management practices on their farms, so long as those practices meet or exceed the rules' requirements.

COMMENT: Commenter recommends involving scientists qualified in the specialized discipline of animal welfare to help reformulate the proposed rules.

RESPONSE: The Department, consistent with the legislative directive of N.J.S.A. 4:22-16.1, consulted with the New Jersey Agricultural Experiment Station as well as other persons knowledgeable in animal husbandry and welfare. In addition, the Department reviewed hundreds of scientific journals and texts, as well as the materials provided in response to the proposal. As noted below, some changes have been made based on that review.

COMMENT: The Department's Summary states the rules are intended "to establish the minimum level of care that can be considered humane." However, it is our conclusion that the proposed rules both endorse routine animal agriculture practices that inflict unnecessary pain and suffering on farmed animals and reframe the status quo in New Jersey animal agriculture as humane standards.

RESPONSE: The rules set forth standards for feeding, watering, keeping, handling, care and treatment, and marketing and sale which must be met to ensure that animals are appropriately cared for. They were developed in consultation with the New Jersey Agricultural Experiment Station and other professionals, as well as after review of agricultural curricula and other scientific literature. The rules permit routine husbandry practices to be performed consistent with the rules, that is done by a knowledgeable individual, in a sanitary manner and in a way to minimize pain. Routine husbandry practices are designed to benefit the animals, the livestock industry, animal handlers and the public health. To clarify which practices are acceptable, the Department is proposing, in a notice of proposal published elsewhere in this issue of the New Jersey Register, an amendment to the definition of routine husbandry practices to refer to those practices taught at veterinary schools, land grant colleges and agricultural extensions. These practices do not inflict unnecessary pain on animals. Many farms in New Jersey are currently operating in compliance with these standards.

COMMENT: The regulations are described as other than "best practices." They do not seek to improve the commonly inhumane, abusive treatment of animals held in New Jersey's farms and therefore do not provide for humane care.

RESPONSE: As noted above, the rules provide baseline standards for humane care of domestic livestock. The Department does not agree with the commenter's opinion that animals living on New Jersey's farms are treated in an inhumane or abusive fashion. If such a situation were to exist, these rules will require alteration of management practices.

COMMENT: As written the proposal codifies standard agricultural practices so that any act in accordance with those practices cannot be construed as a violation of the State's cruelty-to animal laws. If producers accept these practices New Jersey would fall behind as other states adopt more humane alternatives. Instead of paving the way, this proposal, if adopted in its current form, would cement New Jersey's place as a safe haven for cruel and archaic farming practices.. The proposal does nothing but solidify the status quo-which maximizes production and profits, not welfare and is not humane.

RESPONSE: The rules provide an appropriate baseline standard for humane treatment of domestic livestock. Consistent with N.J.S.A. 4:22-16.1, if a person conforms practices to these standards, there is a presumption that the practice will not constitute a violation of the State's animal cruelty laws. While the Department recognizes that some members of the public object to animal agriculture in its entirety, the Department has written its rules as directed by the Legislature in consultation with the New Jersey Agricultural Experiment Station. The Department does not accept the commenter's contention that the rules are not humane, that it would sanction "cruel and archaic" farming practices, or that it fails to consider animal welfare.

COMMENT: The commenter believes that identifying the proposed rules as “humane” standards will institutionalize production methods that are both inhumane and unacceptable and will prevent agencies and organizations from preventing routine agricultural practices which other governments have deemed inhumane.

RESPONSE: As noted above, the Department has created baseline standards for humane treatment of livestock which include standards for feeding, watering and keeping as well as for routine husbandry practices. The Department, which has developed these standards after careful consideration of available information, disagrees with the commenter’s conclusion that the practices and methods are inhumane and unacceptable. Responses to comments on specific practices are set forth below.

COMMENT: The American Veterinary Medical Association (AVMA) commends the Department for its explicit recognition that certain diseases, as well as level of husbandry, can contribute to the condition of livestock. Failure of non-veterinary investigators to recognize such diseases, or to inappropriately attribute resulting changes in an animal’s physical condition to inhumane or cruel treatment rather than disease, will not contribute to appropriate enforcement of the regulations and may place the health and well-being of the animal, as well as public health, at risk. The AVMA encourages the Department to do what it can to ensure that non-veterinary inspectors cooperate and coordinate with the State Veterinarian as per Subchapter 8 of the proposed rules.

RESPONSE: The Department appreciates this commenter's support and will facilitate training of enforcement officials as necessary.

COMMENT: The Summary statement states that psychological stress will be reflected in the animal. The commenter thinks this is questionable in domestic livestock and very difficult to determine by those who are most expert in the various species.

RESPONSE: The Summary statement reads: "[p]hysical or psychological stress created by adverse conditions or inhumane treatment will be reflected in the overall condition, behavior and health of that animal." This sentiment is consistent with the rules' direction that "an animal's status or well-being shall be determined based on a holistic evaluation of the animal." N.J.A.C. 2:8-1.1.

COMMENT: In this section the reference to AVMA's Report of the Panel on Euthanasia should be amended to reference the sixth (rather than fifth) version of the report which is the 2000 Report of the AVMA Panel on Euthanasia.

RESPONSE: The text of the rules refers to the 2000 Report of the AVMA Panel on Euthanasia. Reference to the 1993 report in the prefatory language was in error.

COMMENT: The standards should specify which methods are being adopted from the AVMA's 2000 report of the AVMA Panel on Euthanasia as follows: "The NJDA adopts and incorporates by reference the 'acceptable' methods of euthanasia as set forth in the 2000 Report of the AVMA Panel on Euthanasia," which would clarify the category of methods that is being endorsed.

RESPONSE: The rules, as proposed, do refer to “acceptable” methods of euthanasia as set forth in the 2000 Report of the AVMA Panel on Euthanasia.

COMMENT: Given that the proposed rules specifically state that the NJSPCA, county SPCAs or State or local government authorities may conduct investigations of potential violations, the commenter is concerned a low bar will compromise the ability of these authorities to assure truly humane care of farmed animals.

RESPONSE: The Department, consistent with the Legislative direction of N.J.S.A. 4:22-16.1, has provided an appropriate standard for humane treatment of domestic livestock. The Department is confident that the NJSPCA, county SPCAs, and law enforcement authorities will be able to fulfill their responsibilities to ensure that violations of the regulatory standards are appropriately prosecuted.

COMMENT: The Social Impact statement states that the standards will benefit the health and well being of all domestic livestock, and that producers will benefit from the companionship of healthy livestock. The commenter questions whether standards do indeed benefit the health and well-being and whether producers benefit from companionship of livestock.

RESPONSE: Appropriate treatment of livestock, as set forth in the standards, will benefit the animals as their needs (feeding, watering, keeping, care and treatment) will be met. The Department has no empirical evidence that livestock owners will benefit from companionship of their livestock, although some anecdotal evidence that companionship between humans and animals exists.

COMMENT: Commenter suggests amending language in the Social Impact statement to read: “However, some people ‘may’ intentionally or through neglect, fail to meet adequate standards for livestock care and cause cruelty to the animals.”

RESPONSE: The Social Impact statement is not part of the rules and, therefore, does not require an amendment. The Department agrees, however, that some people “may” fail to meet the standards.

COMMENT: Farm animals are subjected to some of the most egregious cruelty. Cruelty should not be accepted simply because it was inflicted on an animal used for food rather than a companion animal, and the cruelty should not be tolerated because the action is deemed a “common” or “accepted” industry practice. Farm animals must be protected under the law not exempted from it.

RESPONSE: The rules have been designed to prevent cruelty to farm animals. The Department disagrees with the commenter’s premise that “common” or “accepted” agricultural production practices are cruel. The rules, which were developed in consultation with the New Jersey Agricultural Experiment Station, protect domestic livestock from inhumane treatment.

COMMENT: Large-scale animal factories are inconsistent with New Jersey’s smart growth goals.

RESPONSE: The Department disagrees with this assertion. New Jersey is home to approximately 9,600 farms, the vast majority of which are family owned. The rules will not hinder New Jersey’s smart growth goals in any manner, as the rules

will assist farmers in the management of their livestock, enhancing their ability to keep farmland in production.

COMMENT: The adoption of truly humane husbandry provisions will likely generate a significant number of jobs requiring skilled labor.

RESPONSE: At the time of the proposal, the Department did not anticipate the generation or loss of jobs in this State. To the extent that farmers will need to employ additional personnel to meet these standards, jobs may be created.

COMMENT: As written, the standards are not humane. If there is no intent to redraft the rules, any use of or reference to “humane” should be removed and there should be no implication that the State of New Jersey is concerned about the well being of farm animals.

RESPONSE: The Department disagrees with the commenter’s opinion that the standards are not humane or that the well-being of farm animals is not a concern to the Department or the State. As set forth in response to specific Comments below, the Department has addressed concerns raised by this and other commenters with regard to particular practices. The rules reflect the implementation of the complementary objectives of the humane treatment and well-being of domestic livestock and the Department’s responsibility to foster agricultural security, sustainability and growth.

Subchapter 1. General Provisions

N.J.A.C. 2.8-1.1(a)

COMMENT: The regulations require that the health and condition of a particular animal shall be evaluated on a “holistic basis.” Such a “holistic” standard for evaluation freely permits the Secretary and others enforcing the regulations to willfully ignore particular practices, health deficiencies, behavioral limitations and acts of cruelty which, taken individually, do not have a catastrophic “holistic” effect.

RESPONSE: The rules require that the status or well-being be determined on a complete evaluation of the animal. The rules’ standards consider, among other things, the animal’s physical condition, housing, and standards for transportation. Animals that are sick or injured must be promptly treated or humanely euthanized. Further, acts of cruelty are considered violations of the rules. Department does not agree that a holistic evaluation of the animal will prevent enforcement of standards as set in the rules. Acts of cruelty are explicitly prohibited and considered severe violations.

COMMENT: Holistic should be defined.

RESPONSE: Holistic is defined in N.J.A.C. 2:8-1.2(a) as “the consideration of the animal functioning as a complete, integrated unit.”

N.J.A.C. 2:8-1.1(c)

COMMENT: Nothing in the rules prohibits “owners” from providing medical care and treatment to their own animals. This is problematic because this allows practices to continue which have caused suffering to farm animals such as branding, castrating, dehorning, tail docking, beak trimming and other procedures that are routinely performed by non-veterinarians who may have experience in

doing the procedures but who do not consider the welfare of the animal. Because anesthetics are controlled substances, these procedures are performed without them, causing considerable pain. These are procedures which should be performed by licensed veterinarians only.

RESPONSE: The commenter lists procedures that are considered routine husbandry practices. The Department is proposing, in a notice of proposal published elsewhere in this issue of the New Jersey Register, to amend its definition to clarify that it refers to those procedures commonly taught at veterinary schools, land grant colleges and agricultural extensions. The Department expects that such procedures will be practiced in compliance with its regulations (knowledgeable person, sanitary manner, in a way to minimize pain) and as taught by those institutions. The Department rejects the commenter's assumption that persons who perform the procedures do not consider the welfare of the animal or that the procedures cause "considerable pain." Additionally, the Department notes that not all routine husbandry practices require anesthesia and in fact in some instances, anesthetics may be contraindicated (see discussion in regard to specific practices below). The Department does not agree that only licensed veterinarians should perform such practices as other persons may possess the skill and knowledge necessary to perform the practices.

N.J.A.C. 2:8-1.2(a)

COMMENT: The definition of "air quality" is insufficient to qualify as a standard.

RESPONSE: The definition refers to the nature of the air with respect to the health and well being of the animals, and which is achieved by adequate ventilation, waste management and husbandry practices. Further, the definition provides that acceptable air quality results in minimal irritation of the sensitive membrane of an animal's mouth, eyes, nose and respiratory tract caused by elevated levels of irritants such as ammonia in the air. For all species, compliance with rules requires that, among other things, the animal's breed, age, type and physiologic condition be considered. The Department has established an appropriate and enforceable standard.

COMMENT: The definition of "animal feed" does not provide standards for acceptable feed. The commenter also referenced the current Federal Animal Welfare Act as a model.

RESPONSE: The definition of animal feed is quite specific. It includes "any ingredient or material fed to animals to provide nutrients and may include, but is not limited to, natural or manufactured material that can include roughages, concentrates, protein supplements, by-product feeds and crop residues, special feeds, plate waste, minerals, vitamins and feed additives so long as all State and Federal laws are followed." Further, the rule approaches animal welfare not only in the context of each species but also in the context of each individual animal. Since each animal is by definition unique, to create a list of feeds that would encompass every possible variation is not practical.

The definition of animal feed is to be used in conjunction with the feeding requirements for each species. In this context, it does provide a definitive

standard. Under the species specifications, the rules state that each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of adequate body condition. In addition the rules require that each animal be assessed individually.

Although the intent of the definition of animal feed in the proposed rules is similar to the intent of the definition in the Animal Welfare Act (AWA), the AWA refers specifically to animals maintained in environments other than farms (for example, research facilities).

COMMENT: The definition of “animal feed” should prohibit the use of animal products, animal by-products, and animal waste.

RESPONSE: The Food and Drug Administration and the United States Department of Agriculture regulate feed for animals. At this time, the Department will not impose limitations or prohibitions in excess of those set by those Federal agencies.

COMMENT: The definition of “animal housing technique” incorporates use of farrowing crates, gestation crates and veal crates which are inhumane farming practices and the elimination of which is widely supported in the development of legitimate humane standards.

RESPONSE: The definition of “animal housing technique” defines methods used to keep livestock within a certain area or environment and include, but are not limited to, pasture, stanchion barns, stalls, cages and feed lots. Use of crates or stalls for sows and veal calves are permitted as set forth in these rules. Specific standards for the keeping of livestock is included in each subsection of the rules.

The Department developed its rules following extensive review of scientific research. The Department is aware of alternative housing systems, which, if in compliance with these rules, would be acceptable. Farmers are free to select such housing systems.

COMMENT: Regarding the definition for “animal identification,” hot iron branding and all face branding shall be prohibited. Furthermore, whenever possible, alternative, non-traditional methods of identifying animals should be used so as to avoid unnecessary suffering (for example, ID-chips instead of iron branding, etc.) and, wherever any traditional procedure requires surgery, the latter should be performed under anesthesia by licensed veterinarians.

RESPONSE: The definition includes “the use of visible tags, bands, electronic devices, tattooing, branding, ear notching or other means to identify individuals of any species.” Animal identification is an essential component of protecting public health. Use of some of the techniques listed in the definition is addressed in response to species-specific comments. The Department, along with the American Veterinary Medical Association, encourages alternatives to hot branding. Identification chips, while an alternative in animals where its use is permitted by the Federal government, can be costly as well as difficult to read depending on the animal. Identification procedures do not generally require anesthesia and use of anesthesia in certain circumstances is contraindicated. Mitigation of pain may be accomplished through use of analgesia or other methods to numb the area when use would not harm the animal.

COMMENT: The definition of “animal welfare” focuses almost entirely on the productivity of animals and frequently ignores both the health and harmony component of this definition.

RESPONSE: The Department disagrees. The definition of animal welfare is comprehensive and appropriate as it is designed to prevent adverse affects on the health of the animal or its productivity. The rules, through requirements related to feeding, housing, and handling, and caring for the animals, address the needs of the animals.

COMMENT: A definition for the term “antibiotics” should be included in this section. The definition should clarify that only a sick or injured animal be administered therapeutic antibiotics under the care of a veterinarian to return the animal to health. In this scenario, antibiotics should never be withheld. The use of antibiotics to promote growth and antibiotics that are routinely administered in sub-therapeutic levels to control or mask disease should be prohibited.

RESPONSE: Antibiotics are a class of drugs regulated by the United States Food and Drug Administration, both as to content and use. Commenter’s concerns about limitations on use are discussed more fully in the Responses to Comments regarding specific species.

COMMENT: Body condition score cannot be judged without handling the animal and the definition should reflect that.

RESPONSE: Body condition scoring is an evaluation of the amount of body fat reserves an animal has. Fat covering is an indicator of the amount of stored energy or reserves. Body condition scoring is a tool used by farmers to adjust

feed and management practices. While the BCS document was developed for a different purpose (to assist farmers with the management of their livestock), the Department is using this document as a reference tool to assist laypersons who are unfamiliar with the normal appearance of livestock. It is only one of many criteria that should be used to assess an animal's condition. Visual inspection may be the only mode that can be used if the safety of the person assessing the condition could be compromised. The definition recognizes that visual observation or manual palpation may be used depending on breed, species or types of animals.

COMMENT: Revise the definition of "condition" to: "means state of nutritional and structural fitness and natural biological soundness for agricultural use such as calving, reproduction or slaughter."

RESPONSE: The definition of condition, the "state of nutritional fitness or readiness for agricultural use such as calving, reproduction, exercise or slaughter," provides owners and enforcement officials with an understanding that an animal must be in an appropriate physical state for its intended purpose. The suggested language of "structural fitness" and "natural biological soundness" are not defined by the commenter; however, the Department believes its language meets the commenter's intent.

COMMENT: The definition of "cruel or inhumane" incorporates several statutes, which themselves do not contain any specific prohibitive standards. Consequently, the regulations will never be enforceable.

RESPONSE: The definition "cruel or inhumane" refers to violations of the standards of the Department's rules as well as violations of the State's animal

cruelty laws, N.J.S.A. 4:22-17, 4:22-19, 4:22-20, 4:22-21, 4:22-22 and 4:22-26.

These rules and the cited statutes prohibit certain conduct and mandate standards that must be met to avoid a determination that the acts are cruel or inhumane. The rules will, and statutes do, provide an enforceable standard as in evidence by prosecution of animal cruelty offense pursuant to the statutes for decades.

COMMENT: The regulations must provide the exact “daily maintenance requirements” for each species of domestic livestock in each stage of development.

RESPONSE: It is not possible to codify daily maintenance requirements for each species of domestic livestock in each stage of development. To do so would mean to codify exhaustive lists of every mineral, protein, digestible energy level, etc., of every feed source available. Further, such a list would preclude the use of new and specially developed feed sources from being utilized where appropriate.

The definition of daily maintenance requirements is to be used in conjunction with the feeding requirements for each species. In this context, it provides a definitive standard. Under the species specifications, the rules state that each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of adequate body condition. In addition, the rules require that each animal be assessed individually, giving consideration to age, species, breed, and production level, etc.

COMMENT: Nutrients are not required to be provided on a daily basis to adult pigs to be able to sustain the health and maintenance of the animal thereby contradicting the definition of “daily maintenance requirements.”

RESPONSE: The Department is requiring that animals have daily access to sufficient and nutritious feed, in the absence of meeting the requirements of an exception (for example, under the care of a veterinarian). If a species does not require nutrients on a daily basis, an owner would be required to document why an exception was applicable.

COMMENT: In the definition for “extraordinary or catastrophic conditions,” include the requirement that backup systems and emergency plans be in place so that the animals’ well being is not compromised during these circumstances.

RESPONSE: The Department notes that its Division of Animal Health and each county in the State has developed “All Hazards” plans addressing issues relating to animals in disaster situations. Such plans are designed to protect public and animal health during emergencies. Given the existence of those plans and the various types of emergencies that could arise as well as the wide range of facilities and types and numbers of animals at those facilities, it is not practical or feasible to develop specific emergency plans. While not requiring individual farmers to create such a plan, the Department strongly encourages them to consult with county and State officials and to evaluate and develop emergency plans.

COMMENT: The word “comfortably” should be inserted at the end of the definition of floor housing so that it reads “that the animals and human caretakers can walk comfortably on.”

RESPONSE: The Department declines to make this change. Specific requirements for the maintenance of floor housing are set forth in the keeping

section for each species and are designed to ensure safe traversing by the animals and their caretakers.

COMMENT: The definition of “floor housing” should be clarified to prohibit slatted floors and wire floors while also including a requirement for bedding.

RESPONSE: As discussed more fully in the Responses to Comments relating to specific species, there may be times when particular flooring or a requirement for bedding is not appropriate. The definition, which refers to a dirt or constructed floor of a building where uncaged animals are housed and requires that human caretakers can walk on it, is appropriate.

COMMENT: A definition for “growth hormones” should be included in this section. Growth promoting hormones, steroids, and other artificial growth promotants should be prohibited.

RESPONSE: Growth hormones are regulated by the Food and Drug Administration both as to their use and safety in food animals. The Department will not prohibit practices permitted by the Federal government as to growth hormones.

COMMENT: As they relate to the definition for “handling techniques,” “devices” must be clearly defined.

RESPONSE: Handling techniques, whether done manually or with devices, must be done in a manner that provides safety for both the handler and the animal. Handling techniques are routine husbandry practices and depending on the type of animal and the situations, include devices such as ropes, fencing, poles, and

prods. These techniques are taught at veterinary schools, land grant colleges, and agricultural extensions. The Department expects that handlers will use methods and devices as taught by those institutions.

COMMENT: Define the use of “holistic.” The dictionary gives this meaning that the whole is more than the sum of the parts. Does this mean that although one part of the environment does not meet approval, if the animal seems ok it would not be considered a violation? The definition provided in the rule does not address this.

RESPONSE: The definition in the rule, “consideration of the animal functioning as a complete, integrated unit,” reflects a planning approach to humane treatment that views the situation as a whole. The regulation requires that the status or well being be determined on a complete evaluation of the animal. The rules’ standards consider, among other things, the animal’s physical condition, housing, and standards for transportation. Animals that are sick or injured must be promptly treated or humanely euthanized. Further, acts of cruelty are considered violations of the rules. The Department does not agree that a holistic evaluation of the animal will prevent enforcement of standards as set in the rules. Acts of cruelty are explicitly prohibited and considered severe violations.

COMMENT: The definition of “humane” rests on a defined human state of mind and completely ignores animal pain and discomfort and does not define the term humane in the context of physical and psychological comfort and basic behavioral integrity. Under this definition, nothing is “inhumane” unless the State Veterinarian or other enforcing official is in severe physical discomfort.

RESPONSE: The definition of humane uses its commonly understood meaning. The entirety of the standards address issues related to the animals' well-being, including feeding, watering and housing needs, treatment for injury or illness, and when necessary for humane euthanasia. Where treatment falls below these standards, those actions could be considered be inhumane. The comfort level of the enforcing official or State Veterinarian is not relevant to that determination.

COMMENT: Several commenters expressed concern that "hyperthermia" is always detrimental to an animal's health.

RESPONSE: As proposed, "hyperthermia" means an exceptionally high fever. The Department has determined that the definition as proposed is too restrictive and that defining hyperthermia as "an above normal temperature" will provide additional and more appropriate protection for animals. The Department is proposing to amend the definition, in a notice of proposal published elsewhere in this issue of the New Jersey Register.

COMMENT: Induced molting does not simulate a natural molting event; this statement should be deleted.

RESPONSE: The term simulate does not mean an exact replication; use of induced molting as a management practice results in birds entering a non-laying and oviduct rejuvenation period. In nature, birds enter into such a period.

COMMENT: Although not its primary purpose, a consequence of induced molting is that new plumage will develop. For this reason, we suggest that the definition for "induced molting" be amended to read "induced molting is a management practice that simulates the natural molting event and is designed to

bring the entire flock into a nonlaying and oviduct rejuvenation period. After the molt, a new plumage develops and the birds resume egg production at a higher rate with better egg quality.”

RESPONSE: The commenter’s definition provides a clearer description of the practice than that in the proposal. The substantive requirements that pertain to induced molting are found in N.J.A.C. 2:8-4.2(c)3. Because the suggested language will assist the reader in understanding the practice and will not alter the requirements on the regulated community, the Department does not believe this is a substantive change. The Department will amend the language on adoption.

COMMENT: The definition should read that induced molting is an industry practice used to increase egg production and which is accomplished by either removing food or causing a molt through altered feeding practices.

RESPONSE: The rules, at N.J.A.C. 2:8-4.2(c)3, describe the induced molting practice. This definition addresses the purposes of the practice, that is, a high quality egg. The amended definition adequately addresses the commenter’s concerns.

COMMENT: The definition of minor violation would permit acts of substandard practices and unintentional cruelty to be labeled minor unless the action places the animal’s life in imminent peril. Inhumane or intentional acts of cruelty that do not put an animal’s life in peril would be minor violations.

RESPONSE: Upon review of the comments, the Department acknowledges that its definitions of minor and severe violations need clarification. The Department intended that actions that occur due to neglect and unintentional acts of

substandard practice which do not place an animal's life in imminent peril should be considered minor violations. The definition recognized the expectation that many first time, minor violations of the standards will not be due to acts or cruelty or intentional neglect but rather because of lack of knowledge. While this would not excuse the violation, the Department's rule reflected the legislative intent that people be given an opportunity to correct the deficiency. (The Department will facilitate training for owners and others to assist in their understanding of animal behavior and health so they meet the standards established by these rules). Further, the definition as proposed included "unintentional acts of cruelty." Because cruelty generally implies an intention to do harm, the definition was confusing. The Department will adopt the definition as proposed but will immediately propose an amendment to the rule in a notice of proposal published elsewhere in this issue of the New Jersey Register. As proposed to be amended, "of cruelty" has been deleted and the Department has added language to notify persons that serious injuries, as described, to animals as a result of neglect or substandard practices will not be considered minor violations. The Department has mirrored the definition of serious physical injury set forth by the Animal Legal Defense Fund in its Model State Animal Protection Laws (2001). Finally, the Department notes that where minor violations have been found and owners fail to correct those deficiencies, their conduct may be considered an intentionally cruel or inhumane act and as such be considered a severe violation. The definition will be proposed for amendment as follows:

Minor violations include actions that occur due to neglect and unintentional acts of substandard practices which do not place the animal's life in imminent peril or do not cause protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of a limb or bodily organ.

COMMENT: The definition of minor violation does not take into account the amount of suffering the animal endures or the length of time it suffers.

RESPONSE: As noted above, an amendment to the definition of minor and severe violations will be proposed.

COMMENT: Regarding the definition for "minor violations," delete the following text: "and occur due to neglect, unintentional acts of cruelty or substandard practices."

RESPONSE: As discussed above, an amendment to the definition will be proposed. The Department declines to follow the suggested change as to define "minor violations" as "actions that do not place an animal's life in imminent peril" is too broad and not an appropriate standard.

COMMENT: The definition for "physical restraint" should list those restraint/confinement methods that are humane and exclude those that are cruel.

RESPONSE: The definition states that physical restraint may be accomplished manually or with devices and provides examples of such devices (restraint stocks, head gates, stanchions, chutes and ropes). Restraining animals is a routine husbandry practice that is taught at veterinary schools, land grant colleges, and

agricultural extensions. When practiced consistent with these rules and as taught by those institutions, use of physical restraint will not be considered cruel or inhumane.

COMMENT: Modify the definition for “physical restraint” to allow only “temporary” confinement or restriction such as for vaccination or other medical procedure.

RESPONSE: The definition states that physical restraint means confinement or restriction of an animal or part of an animal to accomplish a required task. This implies a temporary restraint. It is distinguished from animal housing techniques.

COMMENT: The commenter questions whether the provisions relating to poultry also applied to geese, ducks, and other domestic fowl.

RESPONSE: The definition of “poultry” includes chickens, roosters, capons, hens, ducks, geese, turkeys, pigeon and guinea fowl (N.J.S.A. 4:5-94) and ratites (N.J.S.A. 4:2-17). Therefore, these animals are covered by these rules.

COMMENT: Are quail covered by the definition of poultry?

RESPONSE: Quail are not included in the definition of poultry at this time. The Department notes that the Department of Environmental Protection, Division of Fish and Wildlife, issues permits for raising quail.

COMMENT: The commenter objects to the definition of “restricted exercise” for any purpose other than when the attending veterinarian recommends exercise be restricted for medical purposes.

RESPONSE: There are many instances other than for strictly medical purposes where an animal's exercise must be restricted including: different stages of growth and pregnancy, inclement weather, aggressive behavior; reproductive behavior; biosecurity, etc. These situations are taught at veterinary schools, land grant colleges, and agricultural extensions. The Department declines to limit the definition as suggested.

COMMENT: The concept of restricted feeding should be deleted as it is another way of saying withholding food for the purpose of increasing economic efficiency; food should not be withheld unless for medical reasons or to prevent obesity or unhealthy weight gain.

RESPONSE: Restricted feeding means regulating feed intake to prevent the deleterious overfeeding at different stages of production and development. The definition is clear that the health and well being of the animal rather than economic efficiency is the basis for restricted feeding. Under the feeding standard for each species, each animal shall have daily access to sufficient and nutritious food to allow for growth and maintenance of an adequate body condition.

COMMENT: Restricted watering should be deleted as it is another way of saying withholding water for the purpose of increasing economic efficiency; animals should have access to fresh clean water.

RESPONSE: Restricted watering means regulating water intake to prevent the deleterious effects of over watering at different stages of production and development. The definition is clear that the health and well being of the animal rather than economic efficiency is the basis for restricted feeding. Under the

watering standards for each species, each animal shall have daily access to water in sufficient quantity and quality to satisfy the animal's physiologic needs as evidenced by the animal's hydration status. There are circumstances where restricted watering may be appropriate, such as before a race where water intake should be limited for the health and well being of the horse.

COMMENT: The definition of routine husbandry practices incorporates and permits inhumane practices that the regulation should prohibit. In particular, the regulations purport to allow any practice "as long as all State and Federal laws governing these practices are followed." Because Federal regulations law addresses only limited aspects of animal transportation and slaughter and New Jersey State law relies on these regulations, this section makes all of the regulations totally ineffective. The rules undercut the State's anti-cruelty statutes.

RESPONSE: The Department disagrees that routine husbandry practices are inhumane and that permitting such practices to be performed consistent with these rules undercuts the anti-cruelty laws. Further, reference to Federal and State law is appropriate (for example, FDA and USDA regulate medication and feed). Routine husbandry practices have been developed and are taught by animal scientists, extension agents, and veterinarians to provide for the health and well being of animals raised for agricultural purposes. The rules specify that only those practices necessary or beneficial to raise, keep, care, treat, market and transport livestock are allowed. This provides for the humane care of animals. All techniques must be performed in a sanitary manner, by a knowledgeable individual, and in such a way as to minimize pain.

After reviewing the comments, the Department has determined that its definition of routine husbandry practices did not clearly reflect its intent that only those techniques commonly taught by veterinary schools, land grant colleges and agricultural extension agents are considered appropriate. The Department will propose, in a notice of proposal published elsewhere in this issue of the New Jersey Register, an amendment to the definition as follows:

“Routine husbandry practices” means those techniques commonly taught by veterinary schools, land grant colleges, and agricultural extension agents for the benefit of animals, the livestock industry, animal handlers and the public health and which are employed to raise, keep, care, treat, market and transport livestock, including, but not limited to, techniques involved with physical restraint; animal handling; animal identification; animal training; manure management; restricted feeding; restricted watering; restricted exercising; animal housing techniques; reproductive techniques; implantation; vaccination; and use of fencing materials, as long as all other State and Federal laws governing these practices are followed.

COMMENT: Remove the term and definition for “routine husbandry practices.” All practices should be defined individually, and the definition should include an explanation of how the practice benefits the animal.

RESPONSE: As noted above, the Department is adopting the definition and simultaneously proposing an amendment to its definition of routine husbandry practices so it is clear that those techniques taught by veterinary schools, land grant colleges, and agricultural extensions are those that are acceptable for use.

Certain routine husbandry practices have been set forth in the rules pertaining to various species (for example, N.J.A.C. 2:8-4.7(e)1 (beak trimming)). Given the number of practices that fall under this category, as well as various species and breeds covered by these new rules, defining each practice individually is neither practical nor desirable.

COMMENT: The definition of “severe violations” is ambiguous and could be read to require that an animal’s life is in imminent peril before a severe violation is found.

RESPONSE: The definition is clear that any intentional cruel or inhumane acts are severe violations as are those actions that place an animal’s life in imminent peril due to neglect or substandard practices. In reviewing the comments regarding the definitions of severe and minor violations, the Department determined that the definitions should be modified. As such, the Department will adopt the definition but will immediately propose, in a notice of proposal published elsewhere in this issue of the New Jersey Register, an amendment to the definition of severe violations, adding actions that cause serious physical injury. The language of the proposed amendment mirrors that definition of “serious physical injury” set forth by the Animal Legal Defense Fund in its Model State Animal Protection Laws (2001):

“Severe violations” include any intentionally cruel or inhumane acts as well as actions due to neglect or substandard practices which place an animal’s life in imminent peril or which cause protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of a limb or bodily organ.

Nothing in this definition shall limit accepted veterinary practices or routine husbandry practices when performed in accordance with these rules.

COMMENT: Requiring intent for a “severe” violation is an extremely rigorous standard that gives the industry excessive protection and allows for cruel practices to go virtually unpunished.

RESPONSE: Intent is not a requisite element for severe violations. Acts which occur due to neglect or substandard practices which place an animal’s life in imminent peril or cause protracted disfigurement or impairment, following amendment of the definition are considered severe. Additionally, failure to correct minor violations after a warning may in some instances be considered an intentionally cruel or inhumane act.

COMMENT: The phrase “imminent peril” is itself ambiguous and could be construed to exclude many situations where the risk to an animal’s life is real but can be counted only in days, for example, not seconds.

RESPONSE: Whether an animal’s life is in imminent peril (imminent meaning “likely to happen without delay, threatening”, Webster’s New World Dictionary), must be assessed on a case-by-case basis considering the breed, species, age, physiologic condition, size, production level or stage of development of the animal and the situation in which the animal is placed. The Department expects that law enforcement authorities and State and county SPCAs are capable of exercising appropriate discretion in determining whether imminent peril exists.

COMMENT: Commenters object to the definition of training techniques as failing to identify acceptable techniques or acceptable and prohibited cues. Tethers and

motivational devices, correction devices or repetitive routines that cause physical injury or that utilize the fear response should be prohibited.

RESPONSE: Training techniques part of routine husbandry practice are taught by veterinary schools, land grant colleges, and agricultural extension. The rules require that animals be handled humanely at all times and that husbandry practices be performed by knowledgeable individuals and in a way to minimize pain. Positive and negative conditioning for the animal's welfare is appropriate so that animals will avoid behavior that is harmful to them and/or their handlers. Intentionally cruel acts, if engaged in, would be a severe violation.

COMMENT: The definition of transport should include the loading and unloading of animals as this is often the most stressful of times during the transportation process.

RESPONSE: Transport is defined as the process of carrying domestic livestock in a vehicle. The Department has specifically excluded the process of loading and unloading and has addressed that as a separate issue within the rules.

Subchapter 2 Cattle

COMMENT: The proposed rule has several commendable areas relating to cattle such as limits on non-ambulatory disabled cattle and other animals unable to move and requiring proper medical care for the diagnosis of injury or illness.

RESPONSE: The Department appreciates the comments.

COMMENT: Cattle should not be able to see other cattle being killed.

RESPONSE: The Department notes that cattle are slaughtered in slaughterhouses which fall under the jurisdiction of the United States Department of Agriculture. Therefore, these rules do not address slaughterhouse issues. The Department adopts and incorporates by reference the acceptable methods of euthanasia as set forth in the American Veterinary Medical Association (AVMA) 2000 report of the AVMA Panel on Euthanasia as amended and supplemented. That report includes methods of humane slaughter.

N.J.A.C. 2:8-2.1

COMMENT: Although the proposed regulations reflect some good ideas and concepts for the protection of cattle, the draft regulations ultimately fail to provide adequate standards for the humane raising, treatment, care, marketing, and sale of cattle, as required by N.J.S.A. 4:22-16.1.

RESPONSE: The Department disagrees. As set forth in the Responses to specific Comments, the standards provide baseline tools to identify those animals that are being treated inhumanely and allows for appropriate enforcement actions by authorized legal authorities.

N.J.A.C. 2:8-2.1(a)1

COMMENT: Although some of the principles listed in this section are appropriate in determining cattle welfare, others appear to be motivated by economic concerns and production goals. For example, an animal's well being could be negatively impacted by its production level, and, therefore, "production level" should be deleted.

RESPONSE: The Department disagrees with the commenter. The Department has the responsibility to promote animal safety, health and well being while simultaneously fostering industry security, sustainability and growth. The Department has written the standards to meet those complementary objectives. Production is enhanced by humane treatment. The rules specifically require that all techniques be performed in a sanitary manner by a knowledgeable individual and in such a way as to minimize pain. In developing standards for humane treatment, the Department has relied heavily on expert scientific and medical opinion.

COMMENT: The proposed standard to assess animals individually is rendered meaningless by permitting body condition scores and feeding and watering practices wholly insufficient to ensure animal health.

RESPONSE: The Department disagrees that its standards permit practices that would be injurious to animal health. The rules require that each animal be assessed individually and be provided with daily access to sufficient and nutritious feed and to water in sufficient quality and quantity to satisfy the animal's physiologic needs. Body condition scores are one criterion to be used to monitor animal health. The scores established in the rules and the direction to take steps to alter the management of an animal when a score falls below that set forth in the rules are appropriate.

N.J.A.C. 2:8-2.2

COMMENT: The following provisions should be included:

Animals should be fed a vegetarian diet of natural feeds and should never be fed animal by-products of any kind. There will be slabs of concrete or packed earth or other firm footing at feed and water troughs to stand on, and cattle will have sufficient room to eat and drink so that they will not need to compete for space, and allowing each animal enough room to step back and turn around comfortably.

RESPONSE: The Department's rule requires daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition. Depending on the age of the animal, there may be the need for animal protein (for example, milk or milk substitutes for calves). The Department also notes that USFDA regulates content of feed. The Department will not preclude use of feed which is permitted by the Federal government. At this time, the Department does not believe it is necessary to require specific types of flooring in a feeding area. N.J.A.C. 2.4(c)4, constructed shelters where feed will frequently be located, specifies requirements for space (for example, cattle must be able to stand, lie down, get up, rest, and move its head freely) and requires that the environment support animal health. This would include flooring or ground that would minimize injury to the animal.

COMMENT: Bunk space of at least 1.5 feet per head of cattle should be provided regardless of the animal's age or degree of finish.

RESPONSE: The Department does not agree that specific space requirements should be mandated. Cattle must be able to stand, lie down, get up, rest, and move their heads freely in constructed shelters. At other times, cattle may be on

pasture. While owners may provide additional space, the rule provides baseline standards for humane treatment.

N.J.A.C. 2:8-2.2(a)

COMMENT: The rule should require that “each animal must be observed at least once a day in order to properly monitor and ensure welfare,” as required by certain European Union regulations.

RESPONSE: The Department disagrees that this language is necessary. The Department expects animals to be maintained properly at all times, but recognizes that all animals do not necessarily need to be **observed** every day. In fact there may be times where the animal may need to be inspected more than once per day to meet that particular animal’s needs. It would be administratively impossible to determine whether each animal was observed at least once per day. Therefore, the Department has required that each animal be assessed individually to ensure it is maintaining an adequate body condition. Moreover, the Department notes that farmers will be routinely in animals’ presence when feeding and watering and providing other care.

N.J.A.C. 2:8-2.2(b)

COMMENT: The proposed standards allow cattle to be maintained at an unacceptably low level while on the farm for an unspecified time and at market where a BCS of 1.0 is permitted.

RESPONSE: BCS systems were designed for use in a production environment, not as humane standards or guidelines. Nonetheless, body condition scores are

helpful when used with other measurements to determine neglect or abuse. The rules use BCS as one of a number of factors in assessing inhumane or cruel treatment. A low score, by itself, does not necessarily indicate neglect or abuse. Low body condition scores may be an indication of severely worn teeth due to old age, lameness, disease, etc. Low scores may call for immediate attention, but in numerous cases do not indicate abuse.

The variability of the conditions and the environments in which animals are raised require a case-by-case determination of the amount of time needed to reverse the condition. As such, the Department cannot require specific timeframes. The rules require that management practices must be altered and “diligent” efforts must be used to restore the body condition. (N.J.A.C. 2:8-2.2 (b)4). The Department is not adopting N.J.A.C. 2:8-2.2(b)4iv and is reproposing that subparagraph to reflect that cattle with a BCS of 1.0 may be sent to slaughter and not to livestock markets.

COMMENT: The section does not include any requirement for veterinary oversight during the restoration time.

RESPONSE: The rules mandate that management practices must be altered and “diligent” efforts must be used to restore the body condition. (N.J.A.C. 2:8-2.2(b)4). While there are occasions when veterinary care will be necessary, the Department declines to identify specific circumstances under which such care is mandated due to the broad spectrum of illnesses and injuries and the varying capabilities of owners to treat such illnesses or injuries. This is consistent with

N.J.S.A. 45:15-8.1 which permits owners to administer to the ills of their own animals.

COMMENT: Several states and countries have all recognized the need for sufficient food for an animal at all times, and that the deprivation of food is inhumane. The regulations should be revised to require that all cows are fed at least once a day and provided with a diet appropriate to their age, weight, and behavioral and physiological needs.

RESPONSE: The rules state that each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of adequate body condition, giving consideration to age, species, breed, stage of development, etc. The rules do not provide for deprivation of food. In addition, the rules require that each animal be assessed individually. The rules address the concern of the commenter, as the feeding is daily and appropriate to the individual animal. Therefore, no change to the rules is necessary.

COMMENT: Commenter objects to the use of weight alone to establish the body condition score and argues that consideration must be given to age, breed, etc., and muscle versus fat.

RESPONSE: The Department agrees and notes that its rules require that age, breed, type, physiologic condition, size, production level/stage of development must be taken into account in determining BCS. This, combined with weighing the animal, provides an appropriate method of assessing body condition.

N.J.A.C. 2:8-2.2(b)1

COMMENT: The following sentence stops without finishing: “BCS can be measured by direct measurement using a weight scale, when available, or by indirect measurement using a weight tape, when available; or.”

RESPONSE: The rule reflects alternative means of establishing an adequate body condition. N.J.A.C. 2:8-2.2(b)1 provides one method; N.J.A.C. 2:8-2.2(b)2 adopts BCS methods as published by agricultural colleges and universities.

COMMENT: N.J.A.C. 2:8-2.2(b)1 erroneously refers to BCS rather than body condition. Weight is not a score.

RESPONSE: The commenter are correct. The Department is providing alternative methods to establish body condition. The Department agrees that N.J.A.C. 2:8-2.2(b)1 should refer to body condition and not body condition score. The wording of the regulation was in error and has been clarified on adoption.

N.J.A.C. 2:8-2.2(b)2iv

COMMENT: Commenters support the feeding requirements for calves set forth in this rule and express specific concerns about alterations in calf feeding as suggested by animal rights groups, such as feeding digestible fiber to veal calves at the age of 14 days as this would actually increase the incidence of abomasal ulcers, and rumen bloat, causing producers to use more medications, and increasing the mortality of these fragile newborns. Commenters further assert iron usage is addressed as part of the American Veal Association’s Quality Assurance Program and that it is not in a producer’s financial interest to allow anemia to occur in their animals.

RESPONSE: The general provision requires that calves must have access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition in a herd or group of animals. In addition, each animal must be assessed individually. The Department does not believe it is necessary to identify with specificity diets to be followed for calves, but notes that the rules would not allow for feeding practices that promote illness or disease.

COMMENT: The rules should include feeding standards for calves.

RESPONSE: The general provision requires that calves must have access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition in a herd or group of animals. In addition, each animal must be assessed individually. The Department does not believe it is necessary to identify with specificity diets to be followed for calves.

COMMENT: Commenters assert that veal calves are not provided with a diet sufficient in iron and roughage, and those calves may be denied solid food. This diet will cause health problems and should be prohibited.

RESPONSE: The Department notes that its regulations require that animals be provided with daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition. This would include any necessary vitamins or minerals to allow for proper growth. The rules further require that each animal be assessed individually. Using diets that would jeopardize the health of calves would be a violation of these rules. Moreover, calves that are sick are required to be promptly treated or humanely euthanized.

N.J.A.C. 2:8-2.2(b)4i

COMMENT: The rules fail to adequately address the health and welfare problems associated with high production dairy cows and codify the practice of keeping animals at an unhealthy body weight during lactation.

RESPONSE: Under the species specifications, the rules state that each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of adequate body condition. In addition, the rules require that each animal be assessed individually.

The rules stipulate management practices must be altered and diligent efforts must be used to restore the body condition (N.J.A.C. 2:8-2.2(b)4) for dairy cows which drop below a BCS of 2. As such, the rules do not codify the practice of keeping animals at an unhealthy body weight.

COMMENT: Commenter asserts that BCS should not be permitted to go below 2.0 and if it does, the animal's management must be altered.

RESPONSE: The regulation requires that a score of at least 2.0 must be maintained; however, it permits a score lower the 2.0 "for a reasonable period of time if stage or level of production or physiologic conditions or other factors results in such an appearance during which time the animal's management is being altered to improve its condition." The Department's regulation recognizes that there may be occasions where an animal's body condition score may go below 2.0 and directs that action be taken to address the condition.

COMMENT: It is recommended that the Babcock Institute Paper be applied to dairy cows in place of the MSU paper, and that a minimum BCS of 2.5 be required for dairy cows.

RESPONSE: The MSU guidelines state that a BCS of 2 is desirable during peak production and that a reasonable range is 1.5 to 2. The Babcock Institute does not provide a recommended BCS for peak production although it states that a BCS of 1.5 one to two months after calving (peak production) is not desirable and graphically illustrates that during peak production a cow is at risk of becoming too thin if the BCS falls between 1 to 2.25. The rule is not inconsistent with either of these publications, as it requires intervention below a BCS of 2. The MSU guidelines were chosen because they are easier to use as they provide more details and illustrations. The Department declines to make the suggested change.

COMMENT: The Department should mandate that dairy cows with a BCS of less than 2.25 be removed from production and provided with immediate care and treatment to restore the BCS of 2.25.

RESPONSE: Neither the MSU nor the Babcock Institute BCS guidelines recommends removing a cow from production as a way to increase the BCS. The MSU guidelines state that a BCS of 2 is desirable during peak production and that a reasonable range is 1.5 to 2. The Babcock Institute does not provide a recommended BCS for peak production although it states that a BCS of 1.5 one to two months after calving (peak production) is not desirable and graphically illustrates that during peak production a cow is at risk of becoming too thin if the BCS falls between 1 to 2.25. The rule is not inconsistent with either of these publications, as it requires intervention below a BCS of 2. The Department believes there is not an appreciable difference between a BCS of 2.25 and 2.0. Moreover, removing lactating cows from production may be detrimental and

inhumane, as an abrupt cessation in milking may result in conditions such as mastitis or metabolic diseases. As written, the rule stipulates that management practices must be altered and diligent efforts must be used to restore the body condition (N.J.A.C. 2:8-2.2(b)4) for dairy cows which drop below a BCS of 2. The rule mandates immediate care and treatment but refrains from stopping production as this could cause further harm. The Department is satisfied its rule provides for adequate care of the animal.

COMMENT: It should be stated that while a BCS of 2.0 is permissible, a BCS of 3.0 is preferred.

RESPONSE: The Department has established standards to ensure humane treatment. Its rule, with its directive to use diligent efforts to restore the animal's condition should it fall below 2.0, is appropriate. The Department notes that owners are free to maintain a BCS of 3.0 for cattle in their herds.

N.J.A.C. 2:8-2.2(b)4ii

COMMENT: The Babcock Institute paper does not specifically discuss body condition scores for replacement heifers; it should not be used.

RESPONSE: The commenter is correct. The citation of the Babcock guidelines was made in error. The Department, when identifying the BCS for replacement heifers, used the MSU guidelines. The Department on adoption has amended the rule to incorporate by reference the MSU guidelines which do have specific standards for replacement heifers. The Department notes the two guidelines are similar and that the BCS remains at 2.0 so there is no change to the requirements to maintain the body condition at a certain level.

N.J.A.C. 2:8-2.2(b)4iii

COMMENT: Beef cattle should have a BCS of 4 when using the Rutgers nine point scoring system.

RESPONSE: The Rutgers guidelines for beef cow condition scoring were written with the primary purpose of providing a tool to attain maximum efficiency in regard to breeding. Nothing in the guideline suggests that a score lower than 4.0 is indicative of neglect or inhumane treatment. Rather, the article says that animals scoring less than 4.0 are less likely to reproduce than those scoring higher. Beef cows scoring 2.0 to 3.0 should still have sufficient body fat stores to carry out all of the body's physiological activities, but they will become pregnant at a lower rate than those scoring higher. There are many reasons why body fat reserves will decline other than neglect or abuse. A young beef heifer calving for the first time at about 24 months of age will lose weight at calving as she begins to lactate for the first time. If she experiences some other stress, such as a difficult birth (breech, abnormal presentation, caesarean delivery, etc.), she could drop to a score of 2.0 or 3.0. The Department declines to accept the suggested change.

N.J.A.C. 2:8-2.2(b)4iv

COMMENT: Several commenters assert that N.J.A.C. 2:8-2.2(b)4iv, which permits a BCS of 1.0 at market, should be deleted as it may be used as an excuse by some producers to allow cattle to have BCS below 2.0 without altering management practices.

RESPONSE: The Department proposed a BCS of 1.0 at market in recognition that there may be times, for reasons appropriate to the stage of production or

development of the animal, that a BCS may fall below 2.0 and, rather than differently manage the animal, it is necessary to transport the animal for slaughter. After reviewing the comments, the Department recognizes that the potential for misinterpretation - that is, that the Department condones a body score of 1.0 - is significant and as such will not adopt N.J.A.C. 2:8-2.2(b)4iv. The Department will re-propose, this subparagraph elsewhere in this issue of the New Jersey Register, in order to clarify it. The Department notes that it will propose a new provision at N.J.A.C. 2:8-2.6(a)3vi to reflect that non-ambulatory disabled cattle shall not be transported to a livestock market. This is consistent with a new Federal rule that prohibits downed animals from entering the food chain.

N.J.A.C. 2:8-2.2(b)5

COMMENT: Regulations should require that cattle be given access to a healthy well-maintained pasture during the growing season.

RESPONSE: The rules require that cattle be given daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition. The Department will not require access to pastures. Farmers may choose to provide pastures in which cattle may graze so long as the pasture provides sufficient and nutritious feed or additional feed must be provided. See N.J.A.C. 2:8-2.2(b)5. Natural/weather/seasonal conditions, including drought or flooding, may impact the availability of such pastures.

COMMENT: Pasture feeding guidelines are too vague for court proceeding purposes as other food sources will not be required.

RESPONSE: The rule provides that if pasture does not provide sufficient nutrition to maintain appropriate body condition, supplemental feed is necessary. The Department anticipates that any enforcement action will be predicated upon an evaluation of conditions in light of the entire regulatory scheme. The Department disagrees that the rule does not provide adequate guidelines for enforcement purposes.

COMMENT: The rule should require that cattle have access to pasture with vegetative cover, and that grazing lands will not have been fertilized with sewage sludge. (Manure from agricultural feeding operations is an acceptable fertilizer.)

RESPONSE: Given variables in the land itself, seasons and weather, vegetative cover may not be available at all times. In those instances, supplemental feeds will be required. The Department notes that fertilization of such pastures must be done consistent with State and Federal law. The Department of Environmental Protection specifically regulates types of and uses for sludge.

N.J.A.C. 2:8-2.2(b)6

COMMENT: No mention is made in the proposed standards of the need for each animal to have sufficient room while eating in order to prevent conflict.

RESPONSE: The Department has not mandated specific space requirements for feeding area. The rule requires daily access to sufficient and nutritious feed for the animal to maintain an adequate body condition and, if group feeding practices cause an animal to fail to maintain an adequate body condition, that animal must be fed in a manner that will allow it to maintain an adequate body condition. The Department believes this addresses the commenter's concerns.

N.J.A.C. 2:8-2.3(a)1

COMMENT: Cattle should be provided with a constant access to a plentiful supply of water. European law requires that “all animals must have access to a suitable water supply or be able to satisfy their fluid intake needs by other means.”

RESPONSE: The rule states that each animal shall be assessed individually and have daily access to water in sufficient quantity and quality to satisfy the physiologic needs as evidenced by the animal’s hydration status. This comports with the standard in the European Union example given by the commenter.

COMMENT: There is concern that there will be many divergent interpretations regarding what exactly is meant by the animals’ “physiologic needs” and “hydration status.”

RESPONSE: The Department disagrees that there will be many divergent interpretations of “hydration status.” There are well-established medical criteria to determine hydration status. The Department will facilitate training on determining hydration status upon request.

COMMENT: Hydration status can be estimated in a number of ways, but the only one readily available to caretakers, animal control officers, or livestock investigators is physical examination, which requires knowledge, is partly subjective, and will not detect mild dehydration. For all species, standards should establish a minimum frequency of watering and amount per body weight. National Research Council guidelines can be used to establish appropriate minimums.

RESPONSE: The Department agrees that physical examination will likely be the way in which hydration status is assessed, but notes that five to 10 percent dehydration may be detected clinically in cattle. The Department will facilitate training for persons who will make such assessments. Use of established medical criteria will minimize the subjective calls made by inspectors. The Department notes a veterinarian may be employed to provide a definitive diagnosis regarding adequate hydration status. The Department does not believe that there is a need to establish minimum frequency watering schedules as suggested. By requiring daily access to water in sufficient quality and quantity to satisfy physiologic needs, an appropriate guideline has been established. Owners are free to use NCR guidelines to determine watering schedules.

COMMENT: Given the uniquely high water requirements of cattle, the statement, “each animal shall have daily access to water in sufficient quantity and quality to satisfy the animal’s physiologic needs as evidenced by the animals hydration status” is commendable.

RESPONSE: The Department thanks the commenter for its comment.

N.J.A.C. 2:8-2.4

COMMENT: Cattle should be housed with their natural social group (the animals with which they were raised).

RESPONSE: On some farms, cattle may be housed with the animals with which they were raised; however, this is not necessary for the humane treatment of cattle.

COMMENT: Living areas must be kept clean to ensure satisfactory hygiene. Outdoor areas must be managed so animals are not forced to stand in standing water and/or feces.

During dry months, sprinklers should be used to minimize dust in the environment.

During hot months, cattle must have access to shade for each animal and additional methods of cooling if necessary.

RESPONSE: The rule requires constructed shelters, among other things, to provide adequate space, be structurally sound, and provide an environment that supports cattle health. Cattle must be provided relief from the elements, including excessive precipitation and excessive temperatures. Natural environments may include trees for shade. The rules provide appropriate baseline standards to ensure an appropriate environment.

COMMENT: All cattle should be processed within 72 hours of their arrival at the finishing lot to avoid spread of disease, boost the immune system, and ensure the overall health of the cattle. If applicable, vaccination boosters should be administered with every effort to avoid undue stress, and administered only in the area in front of the shoulder. At all times, overcrowding should be avoided.

RESPONSE: The Department notes that while processing sometimes occurs within 72 hours of arrival, at some destinations processing may have occurred prior to shipping. In New Jersey, where no large feedlots currently exist, if cattle arrive healthy, they may not need additional processing. The Department does not believe the suggested rule is necessary at this time.

N.J.A.C. 2:8-2.4(a)

COMMENT: Remove the statement “detrimental to the animal’s health” after hyperthermia or hypothermia as hyperthermia and hypothermia are always undesirable for both the animal’s health and welfare.

RESPONSE: By definition, hypothermia is a body temperature below what is normal for that species and hyperthermia is a body temperature above what is normal for that species. (As noted, and for the reasons set forth above, the Department is proposing an amendment to the definition of hyperthermia elsewhere in this issue of the New Jersey Register.) There are circumstances which may result in temporary slight changes in body temperature but which are not detrimental to the animal’s health such as exercise. The modifying term is necessary and appropriate.

COMMENT: Commenter expressed concerns about the requirement to provide bison (buffalo) with shelter: “Buffalo do not like to be in barns. In time, they will destroy the supports of a barn and the barn will eventually collapse.”

RESPONSE: The rules require that owners provide cattle, including buffalo, relief from the elements, but provides for such relief to be accomplished with natural features or constructed shelters (N.J.A.C. 2:8-2:8-2.4(b)). Additionally, the rules requires “all determinations as to whether these humane standards for cattle have met shall take into account age, breed, type, physiologic condition, size, production level/stage of development of the animal, the daily maintenance requirements necessary for the particular animal, and environmental conditions.”

Therefore, specific keeping requirements for buffalo must be considered for their health and welfare.

COMMENT: The proposed standard requiring that each of the covered species be given “relief from the elements...that result in detrimental hyperthermia or hypothermia” is too vague. Guidance must be provided on the warning signs that might indicate the onset of these conditions.

RESPONSE: The Department expects that persons responsible for the care and keeping of animals as well as those charged with enforcing these standards, will have general knowledge of animal behavior and species characteristics. The Department stands ready to facilitate training that will enable people to identify the clinical parameters that would indicate hyperthermia or hypothermia. The Department, given variables in species, age, breed, production level, environments, declines to codify such guidelines.

COMMENT: Revise N.J.A.C.2:8-2.4(a) to read: “The animal’s environment must provide relief from the elements, such as direct, excessive sunlight, excessive wind, excessive temperature and excessive precipitation.” In no case should an animal be subjected to conditions that result in hypothermia or hyperthermia. The word “excessive” must be defined.

RESPONSE: The rule, which states that the animal’s environment must provide relief from elements that result in hyperthermia or hypothermia detrimental to the animal’s health, provides an appropriate standard. The word excessive is to be given its common meaning. Given variables in season, weather, etc., it would not

be possible to identify all scenarios that could result in hyperthermia or hypothermia.

N.J.A.C. 2:8-2.4(b)

COMMENT: Cattle should be provided with shelter that keeps them dry and out of the wind during inclement weather.

RESPONSE: The rule provides for the humane care of cattle. The specific standard for keeping requires animals be protected from the elements such as excessive wind, excessive temperature and excessive precipitation. Due to variability in the environment, the rule sets forth provisions for the type of natural or constructed shelters that would meet the rule's requirements. N.J.A.C.2:8-2.4(b) and (c). The health of the animal is to be assessed to ensure this standard is being met. In addition, it should be noted that cattle often remain outside during inclement weather, even when provided the opportunity to seek shelter.

COMMENT: Cattle should have comfortable dry bedding material and adequate space to turn around, lie with their legs fully out stretched and groom themselves completely.

RESPONSE: The rules proposed by the Department require that shelters shall be of sufficient size to provide adequate space for each animal seeking shelter within to stand, lie down, rest, get up, move its head freely. Nothing in the rules precludes the grooming behavior. In addition, the rules require that shelters shall provide an environment that supports cattle health. Bedding may be used but the Department will not require it. Cattle routinely recline in a sternal recumbent position, but nothing in the rule precludes producers from providing more space.

COMMENT: Cattle should not be kept exclusively on slatted floors and should be allowed access to outdoor pasture during the growing season.

RESPONSE: The rule states that constructed floor surfaces on which animals are kept must provide footing that minimizes injury to the animals. The Department cannot hold farmers responsible for ensuring that cattle will have access to pastures if there is drought, flooding or other conditions which would preclude the use of pastures. Moreover, proper and complete nutrition can be provided by sources other than pasture. Hay, silage, grains, etc, can provide access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition.

N.J.A.C. 2:8-2.4(c)

COMMENT: Several commenters assert that the regulation's standards for pens or shelters are inadequate as they fail to provide sufficient room for animals to turn around, and they otherwise limit natural behaviors. Commenters suggest specific space requirements.

RESPONSE: The rules require that shelters shall be of sufficient size to provide adequate space for each animal seeking shelter within to stand, lie down, rest, get up, and move its head freely. In addition, shelters shall provide an environment that supports cattle health. The rules provide sufficient room as they provide enough freedom of movement for an animal to groom itself, lie on its sternum and to lie down, rest and get up. Moreover, except in inclement weather conditions, the Department notes that most cattle are let out on a routine basis. (As discussed more fully in response to the comments to N.J.A.C. 2:8-2.4(h), some owners

raising veal calves do not routinely permit the calves to go outside). The rules provide sufficient space for cattle and guidance for size. The Department declines to require specific space requirements.

COMMENT: The section on keeping is vague and unenforceable. The Department should adopt best management practices.

RESPONSE: The Department disagrees the standards are vague. Owners and enforcement personnel have adequate information regarding standards to be met to ensure humane treatment of cattle. As noted in other Responses, the Department has identified baseline standards to ensure the humane treatment of domestic livestock. It encourages owners to assess their animals and employ other management practices that exceed the rule's baseline requirements.

COMMENT: The Department should eliminate or set limits on the amount of time animals can be kept on tethers as use of tethers is not humane.

RESPONSE: When used as permitted by the rule (to feed and monitor cattle, to prevent oral-fecal contamination and to prevent injury, and where tethers are long enough to permit cattle to stand, eat, rest in a natural sternal posture or with their head and neck turned to the side of their body, and allow movement forward and backward, yet short enough to prevent strangulation), use of tethers does not constitute inhumane treatment. Tethers can be a useful tool for health of the animal and the handler, and the use of tethers does not cause undue stress on the animals. The Department acknowledges that many practices, if employed in the extreme, may result in conditions that are inimical to animal health. The

Department believes, however, its requirement for use of tethers in combination with the entire regulatory scheme will ensure that animals are treated humanely.

COMMENT: The rule should describe and/or list types of interior surfaces that are acceptable.

RESPONSE: The rule requires that constructed shelters be structurally sound and have a safe interior surface, reasonably free of injurious matter. A variety of materials will meet those requirements (for example, wood, metal, vinyl coated wire). The Department does not believe it is necessary to list acceptable surface types and notes that whatever materials are used, they must comply with the rule.

N.J.A.C. 2:8-2.4(c)3

COMMENT: Remove the word “reasonably” from N.J.A.C. 2:8-2.4(c)3.

RESPONSE: The provision, which requires “a safe interior reasonably free from injurious matter,” is to be considered in conjunction with other standards under “keeping” such as providing an environment that supports animal health. The proposed language of “reasonably free” was used because it is impossible to eliminate all theoretical risk. For example, even standard equipment such as feed or water receptacles can be a source of injury under certain circumstances.

N.J.A.C. 2:8-2.4(c)6

COMMENT: Calf hutches, where used, should be large enough to allow calves to rest on bedding material.

RESPONSE: The rule addresses the commenters concerns: N.J.A.C.2:8-2.4(c) requires bedding in calf hutches and N.J.A.C. 2:8-2.4(c)1 requires adequate space to stand, lie down, rest, and get up.

COMMENT: Revise N.J.A.C.2:8-2.4(c)6 to read: “on bedding material, and all animals should be able to turn around and lie down without touching another animal or the housing structure, and calves should be able to see other calves.”

RESPONSE: The rule’s requirements for space are adequate. N.J.A.C. 2:8-2.4(c)6 specifically addresses calf hutches, a particular type of housing system, and requires that they be “large enough to allow calves to rest on bedding material.” This housing system permits calves to turn around, lie down, and see other calves. Calves so housed either do not touch or have a limited ability to touch other calves so as to limit the spread of disease and control unwanted behaviors in young animals. Calf hutches are consistent with standards for humane keeping of animals.

COMMENT: The Department is urged to require that all cattle, in all circumstances, be provided with adequate space to rest on bedding material and that it be kept clean and dry.

RESPONSE: The rules under the section on “keeping” provide various specifications to protect cattle from inhumane treatment, particularly that they require environments that support cattle health. More specifically, the animal’s environment must provide relief from the elements, and if constructed shelters are provided they must be of sufficient size to provide adequate space for each animal seeking shelter within to stand, lie down, rest, get up, move its head freely and

have natural or mechanical ventilation to provide air quality and maintain an environment suitable for the animals. N.J.A.C. 2:8-2.4(f) requires bedding or matting, if used, shall provide an environments that supports animal health. The Department notes that to require clean and dry bedding material at all times would be an impossibility given the frequency and amount of urine and manure cattle produce. Farmers that use bedding materials need to assure that it is maintained in a manner to support animal health. The Department will not require that bedding material be utilized as there are natural environments, such as pastures where this is not necessary nor practical. No changes will be made to this section as the current wording meets the needs of the animals.

N.J.A.C. 2:8-2.4(c)6, (h) and (i)

COMMENT: Commenters support and incorporate the best management practices set forth in the American Veal Association Quality Assurance Program on their farms, since the recommendations are based on science and focus on the welfare of the calves. They express concerns about diverting from these guidelines as they believe those actions would be harmful to the health and welfare of the calves.

RESPONSE: The rule adopts and incorporates by reference the recommendations for rearing and housing outlined in the Guide for the Care and Production of Veal Calves, Sixth Edition 2001 (American Veal Association or AVA). The assurance program described by the commenter has similar recommendations. Those provide for humane treatment of calves.

COMMENT: Commenters noted their “production practices are based on sound animal science and endorsed by countless studies from prestigious universities such as Penn State and The University of California Davis” and that “removing tethers flies in the face of all current scientific literature and research on the subject. Using tethers allows our farmers to safely and easily provide individual care and gentle contact for the animals.”

RESPONSE: The Department recognizes that some owners may elect to use tethers. If a producer chooses to use tethers, he or she must comply with all pertinent provisions of this rule.

COMMENT: Commenters object to the use of veal crates and use of tethers. They believe the Department should prohibit their use.

RESPONSE: The Department’s rule, which adopts AVA guidelines, permits housing of calves in individual stalls to which they are generally tethered. The Department has addressed the benefits and risks of alternative housing methods for veal calves, including the use of individual stalls and tethers, in response to comments, to N.J.A.C. 2:8-2.4(h) below. The Department declines to require group housing over individual stalls for raising calves and prohibit use of tethers when done in accord with these rules as their use does not constitute inhumane treatment.

COMMENT: The European Commission’s Scientific Veterinary Committee Report stated: “The best conditions for rearing young calves involve leaving the calf with the mother in a circumstance where the calf can suckle and can subsequently graze and interact with other calves.”

RESPONSE: The comment itself refers to “best conditions” for rearing young calves. The Department’s rule is designed to identify baseline standards for the humane treatment of animals, which treatment will not always be identical to natural conditions but will nonetheless protect animal health. In fact, delay in the separation of a calf from its dam may cause stress to the animal when it is removed. While owners are free to raise calves as suggested by the commenter, the Department will not mandate it.

COMMENT: The routine method of keeping veal calves without bedding is inhumane.

RESPONSE: The Department disagrees that raising veal calves without bedding is inhumane. The rule requires that where bedding material is used, it shall provide an environment that supports animal health. If veal calves are raised in calf hutches, which are outside and used for very young animals, bedding material is required. Where the animals are housed in constructed shelters, the rule provides requirements for flooring, ventilation and space, all of which must support animal health. Bedding material is not necessary to ensure the well being of the calf, providing the environment is otherwise supportive. Owners are free to provide bedding material, but the Department will not require it.

COMMENT: Commenters object to the terms “actual threat” and “minimized” as vague or ambiguous. They recommend that hazardous objects be “completely neutralized” and that “actual threat” should be better defined to preclude the possibility that animals would first have to be injured before action is taken by caretakers, animal control officers, or livestock inspectors.

RESPONSE: The rule is not vague or ambiguous. The rule's requirement that sharp objects and debris that pose an actual threat to the animal's health be minimized is an appropriate description of the types of hazards that should be addressed. Actual threat does not mean an animal must be first injured, rather the term speaks to likelihood that the animal will be injured given facts such as the size of the animal, amount of space available, and time spent in environment. The rule specifically requires that if stationary objects which pose a risk of injury cannot be removed, reasonable efforts must be made to minimize contact by fencing off or covering the object or similar means. If objects are not stationary, the rule requires that actual threats to the animal's health shall be minimized to reduce the risk of injury. This construction recognizes that not all objects will present an actual threat to the animal but requires the owner to take action to prevent harm.

COMMENT: Rephrase N.J.A.C. 2:8-2.4(d)1 to say, "Sharp objects that pose an actual threat to the animals shall be removed."

RESPONSE: This provision is to be considered in conjunction with other standards under "keeping" (N.J.A.C. 2:8-2.4) such as providing an environment that supports animal health. The language "minimized to prevent unreasonable risk of injury to the animals" is needed because it is impossible to eliminate all theoretical risk. For example, even standard equipment such as feed or water receptacles can be a source of injury under certain circumstances.

N.J.A.C. 2:8-2.4(e)

COMMENT: Slatted floors in veal crates should be prohibited as they may injure animals and if slippery may impede the ability of calves to stand and lie down; animals should not be restricted to bare concrete floors.

RESPONSE: In N.J.A.C. 2:8-2.4(c), (e) and (f) the rule mandates that constructed floor surfaces on which animals are kept must provide footing that minimizes injury to the animals and any bedding or matting used shall provide an environment that supports animal health. The Department does not believe that it is necessary to limit the types of flooring surfaces allowed as the requirements in the proposed rule provide an appropriate baseline standard.

N.J.A.C. 2:8-2.4(f)

COMMENT: Bedding should always be provided to keep cattle comfortable and dry.

RESPONSE: It is not necessary to require bedding materials as the rule requires an environment that supports animal health and other environments may be appropriate (for example, pasture or natural ground conditions).

COMMENT: All cattle should have adequate space to rest on bedding material.

RESPONSE: The rule for constructed shelters requires that there is sufficient space for the animal to stand, lie down, rest, get up, and move its head freely and that they support animal health. As noted above, bedding material is not required to ensure humane treatment of cattle. The rule addresses the commenter's concerns.

N.J.A.C. 2:8-2.4(g)

COMMENT: The proposed section on tethering is unacceptably broad and needs to be revised. Cattle must not be tethered or otherwise confined for extended periods in such a manner that they cannot walk or exercise. By failing to place any limits on tethering, the proposed regulations fail to adopt an actual “standard” within the meaning of N.J.S.A. 4:22-16.1. Commenters suggest the use of recommendations used by other countries.

RESPONSE: The Department disagrees that there are no limits on tethering. As set forth in N.J.A.C. 2:8-2.4(g), “tethers must be long enough to permit the cattle to stand, eat, rest in a natural sternal posture or with their head and neck turned to the side of their body and allow movement forward and backward, yet be short enough to prevent strangulation.” The Department has reviewed the recommendations cited by the commenters and has concluded that its regulation is appropriate.

COMMENT: Veal calves tethered and confined in crates exhibit more signs of stress than those raised in group pens, suffer from leg and joint problems and require approximately five times more medication than calves living in more spacious conditions. They also generally display abnormal coping behaviors associated with frustration such as head tossing, head shaking, kicking, scratching and stereotypical chewing behavior.

RESPONSE: Calves housed by tethering in individual stalls have shown no demonstrable evidence of stress in studies which have measured parameters known to be indicators of stress. If the Department’s standards for raising calves are followed, there will be reduced need for use of medication. The Department

notes that such medication is necessitated by the stress of movement and shipping of calves that may not have been given adequate colostrum before shipping. The Department rules, which have adopted the AVA guidelines, will require that calves be provided with colostrum. Additionally, calves raised in all environments are susceptible to diseases and may require antibiotic treatment. The standards reflect a holistic approach to animal health which include the animal's environment, requirements for feed and water, and handling. The Department is unaware of research to support commenter's contention that veal calves suffer from leg and joint problems. The Department is monitoring the debate in the scientific community as it investigates and evaluates stereotypical behavior, including its etiology and impact on animal health. The Department will consider additional rulemaking as necessary. Finally, the Department notes that studies have show that calves raised in group pens may suffer additional stress based on handling requirements.

N.J.A.C. 2:8-2.4(h)

COMMENT: Commenters object to the use of veal crates and the use of tethers as the commenters assert they prevent meaningful movement, don't permit grooming behavior, prevent exercise necessary for healthy development, and limit social contact with other calves. They believe the Department should prohibit their use.

RESPONSE: The Department has adopted the American Veal Association Guidelines for the Care and Production of Veal Calves which provides for alternative methods of raising veal calves. The Guide discusses four alternatives for housing: individuals stalls, individual pens, group rearing in pens, and a

combination of individual and group rearing. While there are currently no veal calf farms in New Jersey, were a farmer to begin raising veal calves, he or she would be able to select any of the alternatives and, assuming other standards were met, be in compliance with the Department's regulation.

The commenters' concerns are mainly addressed to raising veal calves in individual stalls. According to the AVA Guide, reasons for using individual stalls include: less potential for passage of disease between calves; less possibility of fecal contamination (because calves are tethered, facing in same direction); ability of farmers to give individual attention to calves and to do health checks with less stress; and less potential for detrimental behaviors such as cross-sucking and aggressiveness. Moreover, studies have shown calves in crates spend the same amount of time or more lying down than group housed animals and veal calves raised in individual stalls are better adjusted to routine handling than group raised calves as evidenced by levels of the stress hormone cortisol. These reasons are consistent with the research reviewed by the Department when it developed its rules.

The Department has determined that tethering of calves is a tool used to protect them from disease, minimize injury, and allow social contact among calves. Advantages of tethering include:

- 1) Tethering prevents the calf from defecating in its water and feed buckets – a common occurrence in calves that are allowed to freely move about their stalls. Additionally, tethering restricts the licking of back and rump of

neighboring calves. (Sato et al, 1991) Prevention of these behaviors minimizes disease transmission among calves.

- 2) Tethering allows for individual calf stalls to be larger (Sato et al, 1991) by preventing unwanted contact with the back and rump of neighboring calves.
- 3) Tethering permits head and neck licking of neighboring calves (Sato et al, 1991), thus increasing social contact among calves.
- 4) Tethers prevent unwanted or aggressive behaviors. Some calves are more aggressive and antagonistic towards timid calves (Veissier, et al., 1994). Tethers help protect against this behavior while allowing social contact.
- 5) Among dairy calves, tethering allows them to become accustomed to the method of restraint they will experience as adult dairy cattle in the milking barn.

Two major arguments against tethering include: confinement by tethering leads to increased stress on calves; and tethering leads to inhibition of muscular development. These arguments are not adequately supported by science. First, according to Dr. Carolyn Stull, an animal scientist and animal welfare specialist at the University of California, physiological data show that tethering is not a stressor as exhibited by health, growth, levels of the stress hormone cortisol, white blood cell levels, and changes in the stomach lining. (Stull and McDonough, 1992). Second, confining calves by tethering or crating does not inhibit muscular development. Tethered calves, when released into a large enclosure, actually perform more locomotive behavior than group housed calves –

a strong indication that there is no delay in their muscular development (Warnick et al, 1977; Dellmeier et al 1985; LeNiendre, 1993).

In summary, tethering veal calves allows the calves larger stalls and socialization while protecting of their health, and does not cause undue stress or inhibition of development. The Department notes that tethering must be employed in the manner provided in these rules and when so employed may be a useful and effective management option for calf raisers.

COMMENT: Commenters state that the rule's language does not make clear that the standards in the AVA guide are enforceable.

RESPONSE: Through the publication of the rule, the Department is adopting and incorporating the AVA guidelines. This gives those guidelines the same force as any other provision in the rules. Owners who comply with the recommendations will be in compliance with these regulations. To the extent the AVA guidelines permit alternative methods of raising veal calves, the Department has determined that each method is acceptable to ensure humane treatment of the calves. The Department will monitor any changes to the guidelines to ensure that those changes would reflect an appropriate practice for humane treatment of veal calves.

COMMENT: The Department does not have the authority to delegate its obligation to provide humane standards to a private entity.

RESPONSE: The Department has not delegated its authority to develop humane standards to a private entity. The Department, in consultation with the New Jersey Agricultural Extension and after reviewing numerous resources, determined that

the AVA recommendations are an appropriate standard for the humane treatment of veal calves. The Department has fulfilled its statutory obligation to develop and adopt humane standards.

COMMENT: Delete use of the AVA Guidelines and require that each calf, whether intended for veal production or not, must get his or her mother's fresh colostrum milk immediately after birth to build the calf's immune system, and, as a ruminant, must thereafter have access to edible hay and/or be allowed to graze on pasture.

RESPONSE: The AVA Guidelines require that a calf receive two to four quarts of high quality colostrum as soon as possible after birth and at least two quarts each at two additional times during the first 18 hours after birth. The Department notes that each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition. A calf need not have access to hay or pasture to meet this requirement. The Department believes its regulation is appropriate.

COMMENT: Commenters object to the Department's use of the AVA guidelines arguing that the industry group's guidelines are flawed and inhumane because they permit tethering, use of crates and a deficient diet which does not foster rumen development and causes anemia.

RESPONSE: The Department has selected the AVA Guidelines because they set forth housing, feeding, watering, handling and other requirements that are designed to support animal health. Those guidelines are to be read in conjunction with other provisions of the rules. As explained more fully in the Responses to

Comments in N.J.A.C. 2:8-2.2, the Department does not agree that the diet provided to veal calves causes harm to the animal.

COMMENT: The American Veal Association, AVA, an industry group, developed its standards without meaningful public input and is not concerned with humane standards or animal treatment. The Secretary should not rely on any standard which was not developed with the public notice and comment procedures required of a New Jersey rulemaking.

RESPONSE: The Department has complied with the rulemaking requirement of the Administrative Procedure Act and has received and responded to comments submitted regarding reference to and use of the AVA Guide in this rulemaking. The Department notes that it has incorporated the Report of the AVMA Panel on Euthanasia (N.J.A.C. 2:8-2.6(a)1) and the loading and truck space requirements in Livestock Trucking Guide by Temple Grandin, Ph.D. (N.J.A.C. 2:8-2.5(i)) for cattle, as those documents reflect an appropriate standard for humane treatment of cattle.

COMMENT: Commenters state group housing provided superior behavior and production characteristics than individual housing, citing “less abnormal behavior including stereotypies, more natural lying behavior, and better production.” Other problems associated with close confinement are thermoregulatory difficulties and inability to exercise. The Department should require AVA guide standards for group housing.

RESPONSE: The entire AVA guide has been incorporated into the proposed rule including the section on recommendations for group housing. Owners are free to

employ group housing in raising veal calves. The Department does not agree that group housing provides superior behavior and production characteristics and notes that different studies highlight the benefits and detriments of different housing forms.

The AVA Guide has standards for individual stalls, individual pens as well as group pens. It is emphasized again that the AVA Guide is in addition to the remainder of the species specifications as outlined in the proposed rule. The rule states that the environment must support cattle health. This allows each housing and management system to be evaluated with the emphasis on the health of the calf as an indicator of humane treatment. The Department considers that the combination of the species-specific standards and AVA Guide is sufficient for veal growers. The Department declines to require group housing for veal calves.

COMMENT: The Scientific Veterinary Committee (SVC) of the European Commission concluded that confining and/or tethering calves in crates, practices recommended by the AVA, are inhumane.

RESPONSE: Per Council Directive 97/2/EC 20 January 1997 amending 91/629/EEC, both the confinement in small pens as well as tethering are allowed by the European Union under certain circumstances. Under the proposed regulations, N.J.A.C. 2:8-2.4(g) states, "Tethers must be long enough to permit the cattle to stand, eat, rest in a natural sternal posture or with their head and neck turned to the side of their body and allow movement forward and backward, yet be short enough to prevent strangulation." The rule, at N.J.A.C. 2:8-2.4(c)1,

requires adequate space must be provided to stand, lie down, rest, get up and move its head freely. This does not preclude grooming.

The rules provide baseline standards for humane treatment and the Department does not agree that the use of tethers or individual stalls when used in compliance with the regulation are inhumane.

COMMENT: Calves kept in small crates display chronic standing leading to some stereotyped behavior or may remain completely immobile for long periods.

RESPONSE: Both the proposed rule itself and the AVA guidelines mandate that housing shall allow calves “adequate space must be provided to stand, lie down, rest, get up and move its head freely” (N.J.A.C. 2:8-2.4(c)1), and “tethers should be long enough to allow the calf to stand, groom, eat, lie down and to rest in a natural, sternal-recumbent posture.” (AVA Guidelines). The issue of chronic standing is addressed as the proposed standards require the calf be able to make postural adjustments (lie down and rest in a natural position). As noted above, the Department is monitoring scientific research related to stereotypies and will pursue additional rulemaking as appropriate.

COMMENT: Commenter states research shows calves in small pens which do not allow them to turn around are deprived in various ways and the inability of the animal to groom a large part of its body may cause frustration.

RESPONSE: The regulations under the section on “keeping” provide various specifications to protect cattle from inhumane treatment, particularly that they require environments that support cattle health. More specifically, if the animal is housed in a constructed shelter, it must be of sufficient size to provide adequate

space for each animal seeking shelter within to stand, lie down, rest, get up, and move its head freely. In addition, for veal calves the AVA guidelines specify that calves should be allowed to groom. The Department believes its rule addresses the commenter's concerns.

COMMENT: The AVA guidelines permit calves to be raised with diets deficient in iron and fiber.

RESPONSE: The Department disagrees that the AVA recommendations it has adopted for housing and rearing calves will, when read in conjunction with the other sections of the rules, permit calves to be raised with a deficient diet. As noted in response to Comments above, were an animal to be anemic, the rules require that it be promptly treated or humanely euthanized. Moreover, veal calves have a specially formulated diet that contains nutrients that will meet the animals' needs. The Department notes that producers monitor the iron levels in their animals.

COMMENT: N.J.A.C. 2:8-2.4(h) should be amended to phase out the use of all stall or tether systems that do not provide calves with enough room to turn around, engage in grooming, exercise and interact with other calves. The required phase-out should be completed in a "reasonable period of time", using a definition similar to that provided in the proposal, so that a date is set that allows for the amount of time it would be expected to take to modify housing and diets, using diligent efforts to do so.

RESPONSE: The Department has determined that raising veal calves consistent with the standards for housing and diet set forth in the regulations is appropriate

and, therefore, a phase out of stall systems or use of tethers is not necessary. The Department notes that there are no veal calf raising farms currently operating in New Jersey. Should a producer decide to start such a venture, he or she may decide to use any of the housing systems in the AVA guidelines, which includes group housing and a combination of individual stalls group housing, individual pens, and individual stalls.

COMMENT: In a November 2002 letter, Lester Friedlander, DVM, observed “swollen joints,” and “infected joints” caused by “excessive contact to the sides of these veal crates.”

RESPONSE: N.J.A.C. 2:8-2.4(c)4 states that the environment should support cattle health. If a certain type of housing is the cause of chronic injuries, it would not be consistent with the regulation. The proposed rule also requires that sick or injured cattle shall be promptly treated or humanely euthanized. (N.J.A.C. 2:8-2.6(a).) Use of individual stalls as contemplated by the rules is not expected to result in the types of conditions described by the commenter.

COMMENT: Commenter cites to a poll conducted in May 2002 by the Eagleton Institute at Rutgers University to argue that the public supports a bill related to veal raising practices

RESPONSE: The cited Eagleton Poll, which was sponsored by Farm Sanctuary (the commenter), was reviewed by the USDA’s Animal and Plant Health Inspection Services’ (APHIS) Centers for Epidemiology and Animal Health (CEAH). CEAH is the APHIS center, which monitors animal health issues and is tasked with writing surveys to eliminate bias in the questionnaire itself. Because

the survey instrument submitted included only two questions and no preamble, it could not be evaluated as a complete questionnaire. It is possible that the wording of the questions not supplied, the wording of the preamble and/or the order of the questions were factors in the responses elicited. While the Department can make no conclusions based on the findings of this poll, it is aware that public perception of the manner in which veal calves are raised has in part been shaped by persons who oppose veal calf raising practices.

COMMENT: Chefs, including those in prestigious Manhattan restaurants, are choosing to serve “free range” veal rather than “milk fed” veal.

RESPONSE: The Department is aware that individuals and private entities make different choices regarding purchase and consumption of veal for a multitude of reasons. The appropriateness of the standards adopted by the Department, however, is assessed based on review of scientific information.

COMMENT: Commenter asserts that livestock farmers oppose veal industry practices, citing to a quotation in *Farm Animal Welfare*, by Bernard Rollins (Iowa State University Press, 1995).

RESPONSE: The Department is familiar with the work of Professor Rollins and notes that there are many and varying opinions regarding practices related to raising veal calves. The Department has opted to adopt the AVA guidelines related to veal calf production, as, after considerable review of science, it determined those guidelines provide the appropriate standard.

COMMENT: The AVA Guide provides advice on how to care for veal calves prior to their arrival at the veal production facility. We encourage the Department

to explicitly adopt and apply these standards to farms, especially the dairy farms where calves are born.

RESPONSE: The Department has adopted the AVA Guide in its entirety and, as such, the standards apply to dairy farms where calves are born.

N.J.A.C. 2:8-2.5(a)

COMMENT: The rule should mandate humane training for transporters in accordance with N.J.A.C. 2:8-8.1(b)1i. Persons moving animals must handle them in a way that avoids undue stress, injury or suffering during loading, unloading, processing, sorting, or transport.

RESPONSE: The rule's requirements apply to transportation of animals and transporters are responsible to meet those requirements, which include the requirement that cattle must be handled (loaded and offloaded) and transported in a manner that minimizes injury, illness, and death. The Department expects that transporters and handlers have a basic knowledge regarding animals. If training is necessary, the Department will facilitate such training but the Department will not require it.

COMMENT: The provision should make clear that the owner of the animals is also responsible for the welfare of the animals at all times, including transport.

RESPONSE: The rule states that the driver of the transport vehicle and/or the person who is present in the vehicle for purposes of transporting the cattle shall be responsible for the welfare of the animals at all times during transport. This is consistent with the European Union, Canada and other countries. Owners are

expected to select transporters who have appropriate knowledge of animal welfare and who will comply with the Department's regulations. Because owners have an interest in the well being of their animals during transport, they will take appropriate steps for the animals' welfare. The Department does not believe the suggested change is necessary.

N.J.A.C. 2:8-2.5(b)

COMMENT: Commenters state that the language "minimizes, injury, illness and death" is vague and does not give transporters or enforcement officials guidance to determine satisfactory outcomes.

RESPONSE: The rule specifically requires that handling and transporting be undertaken to minimize adverse affects on animals. Transporters or owners are expected to have basic knowledge of animal behavior and should identify conditions that are hazardous to animal health. The Department will facilitate training as necessary. The Department believes that itemizing events or conditions that would minimize adverse events is a nearly impossible task given the various situations that arise during transport. The rule's use of the term minimize, whose commonly understood meaning is "to reduce or keep to a minimum" (Webster's New Encyclopedic Dictionary, Merriam-Webster, Inc. 2002), advises both owners and enforcement officials of the obligations imposed by the rules.

N.J.A.C. 2:8-2.5(b) and (c)

COMMENT: Commenter suggests adopting European recommendations for transport of cattle, specifically: "cattle shall have sufficient room to stand, lie down in its natural position unless special provisions for the protection of the

animals require to the contrary....When calculating space requirements, the size condition of the animals, the weather, and the nature and length of the journey must be taken into account.”

RESPONSE: The rule states that cattle transported for any purpose must be handled and transported in a manner that minimizes injury, illness and death. The other provisions of N.J.A.C. 2:8-2.5 are consistent with the European recommendations cited in the comment. For example, the rule states cattle shall be able to stand in a normal posture; cattle shall be grouped according to size and behavior when in a vehicle; cattle shall be provided with adequate ventilation; and, during transport, the animals’ environment must provide relief from the elements that result in hypothermia or hyperthermia detrimental to the animals’ health

COMMENT: The rule should prohibit the use of unreasonable force sufficient to cause breakage or dislocation of the tail in twisting an animal’s tail to cause it to move.

RESPONSE: Under N.J.A.C. 2:8-2.5(b), the rule states that cattle transported for any purpose must be handled and transported in a manner that minimizes injury, illness and death. Unreasonable force causing any type of injury would be in violation of the rule. A specific rule prohibiting tail twisting is not necessary.

COMMENT: Commenter asserts that the term “minimal delay” should be defined or that specific times should be mandated pertaining to loading and unloading with adequate stops for rest and water. The number of animals being transported must be considered.

RESPONSE: The term “minimal delay,” when read in conjunction with the remainder of the rule, provides sufficient guidance. The Department notes that given variables in transportation (weather, vehicle breakdowns, etc.), it is neither practical nor desirable to define the term with more specificity. The number, type, age, etc., of animals may impact times for loading and unloading so specifying times would similarly not be practical. The Department notes its rules for minimizing delay, illness or injury will apply.

N.J.A.C. 2:8-2.5(d)

COMMENT: The phrase “adequate ventilation” - an additional requirement for animals during transport - should be clarified.

RESPONSE: Adequate ventilation is one factor in achieving acceptable air quality as defined in N.J.A.C. 2:8-1.2(a) of the rules. Acceptable air quality results in minimal irritation of the sensitive membranes of an animal’s eyes, nose and respiratory tract caused by elevated levels of irritants such as ammonia in the air. Transporters, owners or other persons responsible for the welfare of the animal are expected to have basic knowledge of animal behavior and animal health and ensure that transportation modes minimize illness, injury and death and that ventilation will support animal health.

N.J.A.C. 2:8-2.5(e)

COMMENT: Remove the statement “detrimental to the animal’s health” after hyperthermia or hypothermia. Hyperthermia and hypothermia are never comfortable conditions and animals in hyperthermic or hypothermic conditions must be provided relief immediately. Guidance must be provided on the warning

signs (for example, hazardous body temperatures) that might indicate the onset of the conditions “hypothermia” or “hyperthermia.”

RESPONSE: By definition, hypothermia is a body temperature below what is normal for that species and hyperthermia is a body temperature above what is normal for that species. (As noted, and for the reasons set forth above, the Department is proposing an amendment to the definition of hyperthermia elsewhere in this issue of the New Jersey Register.) Slight changes in body temperature may not be detrimental. Where such change is detrimental, failure to provide relief would violate the rule. As noted above, the Department expects that persons responsible for the transport of animals will have general knowledge of animal and species characteristics. The Department will facilitate training that will enable people to identify clinical parameters that would indicate hyperthermia or hypothermia.

N.J.A.C. 2:8-2.5(i)

COMMENT: The rule incorporates by reference the Livestock Trucking Guide but does not make it clear if these are recommendations or requirements. The rule should clearly state that failure to adhere to the standards in the referenced documents will constitute a violation of the rules.

RESPONSE: Through publication of the rule, the Department is adopting and incorporating the Livestock Trucking Guide by Temple Grandin as to loading and space requirements as amended and supplemented. This gives the Guide the same force as any other provision of the rule. Persons who comply with the Guide will be in compliance with these regulations. Additionally, if the Guide is amended as

science and research changes, it allows such changes to take effect without having to amend the regulation. Of course, the Department will monitor any changes to the Guide to ensure that such changes would reflect an appropriate practice to ensure humane treatment of animals being transported.

N.J.A.C. 2:8-2.5(l)

COMMENT: The language in N.J.A.C. 2:8-2.5(l), stating that food and water must be provided for animals not moved from an auction barn, suggests that animals moved from an auction barn need not have access to food and water in accordance with 9 CFR Part 313.2(e).

RESPONSE: The Department does not agree that the rule suggests any limitation on removal of feed and water. This section speaks to animals that remain in an auction barn, transfer station or similar location for periods before or after transportation. Access to feed and water for cattle is governed in N.J.A.C. 2:8-2.2 and 2.3.

COMMENT: Delete N.J.A.C. 2:8-2.5(l).

RESPONSE: The rule's requirement that animals held in pens have access to water and, if held longer than 24 hours, access to feed, should not be deleted because, consistent with Federal law, it provides that animals will not be deprived of water or food beyond certain time frames.

COMMENT: The proposed standards permit the excessive withholding of food and water both prior to and during transport. In accordance with the Humane

Slaughter Act, 9 C.F.R. §313.2, animals may be deprived of food for up to 24 hours while confined in holding cages and pens.

RESPONSE: N.J.A.C. 2:8-2.5(l)1 specifically states the 24-hour time without feed is the maximum time and is not in addition to transport time. As noted in the rule's exception at N.J.A.C. 2:8-2.7(a)2, consistent with Federal law, animals may be confined in a vehicle for up to 28 hours without food and water during transport. The Department has determined that the Federal requirements for access to water and feed in pens contained in the rules related to humane slaughter are appropriate to use for times when cattle are held before, during, or after transport.

COMMENT: At N.J.A.C. 2:8-2.5 (l), delete "not moved from an auction barn, transfer station or similar location".

RESPONSE: It would not be appropriate to delete the quoted language from this section which applies to animals being transported. N.J.A.C. 2:8-2.2 and 2.3, address requirements for feed and water for animals, not in holding pens, and requires daily access to both.

N.J.A.C. 2:8-2.6(a)

COMMENT: The regulations should explicitly require veterinary care for animals who are sick or injured within a stated period of time and that such care should return the animal to full health. In the event the animals do not recover, they should be taken out of the production cycle to recover or humanely euthanized.

RESPONSE: The rule states: “[s]ick or injured cattle shall be promptly treated or humanely euthanized” (N.J.A.C. 2:8-2.6(a)) and “[p]roper medical care for the diagnosis or management of injury or disease must be provided to sick, injured, or non-ambulatory disabled cattle.” (N.J.A.C. 2:8-2.6(c)) The regulation, consistent with N.J.S.A. 45:15-8.1, permits owners to administer to the ills and injuries of their own animals. N.J.A.C. 2:8-6.6(c)1. While there are occasions when veterinary care will be necessary, the Department declines to identify specific circumstances under which such care is mandated due to the broad spectrum of illnesses and injuries and the varying capabilities of owners to treat such illnesses or injuries. Moreover, the presenting signs and manifestations of diseases are extremely variable in nature. It is not practical to have a specified time frame which would cover such variation or to require that an animal be taken out of production as that action may not be necessary on all occasions.

COMMENT: The rule should prohibit the transport, marketing and slaughter of downed livestock. Downed livestock should be treated by a veterinarian or humanely euthanized.

RESPONSE: The rule requires that non-ambulatory disabled cattle and other animals unable to move be handled at all times in a humane manner. Those steps are designed to provide for humane handling of the animal. Since the rule’s proposal, the United States Department of Agriculture has issued an emergency interim final rule related to non-ambulatory disabled cattle. That Federal rule, compliance with which is mandatory, provides that such animals may not be slaughtered for use in the human food chain. That rule will virtually eliminate the

transportation of downed cattle for slaughter. The Department notes that in instances where the animal is non-ambulatory on the farm, it is likely that the animal will be euthanized on the farm. Where it is necessary to transport a non-ambulatory animal-for example for veterinary care, these rules must be followed.

COMMENT: The exception to allow the dragging of nonambulatory cattle for life saving treatment provides an unacceptable loophole and should be deleted.

RESPONSE: The rule mandates that disabled cattle must be moved as safely as possible in order to minimize injury and shall not be dragged while conscious, except to provide life-saving treatment. Rather than create a loophole, this is an appropriately circumscribed exception as there are circumstances where dragging may be necessary (for example, a cow falling into a pond).

COMMENT: Commenter citing to a Food Chemical News article states that by failing to prevent the transport, marketing and slaughter of downed animals, the Department allows inhumane practices that even most livestock producers oppose.

RESPONSE: The articles supplied by the commenter do not provide support for the comment that most producers oppose the transport, marketing and slaughter of downed animals. The articles report on sentiments as well as a poll conducted on the subject. The producer and industry sentiment in the articles is limited to the area of marketing down animals through livestock auctions. In fact, the Food Chemical News article states, “the percentage of livestock producers who would support legislation making the transport of downer livestock to livestock markets illegal was 51%.” Twenty-six percent said they would oppose such legislation

and 23 percent were neutral. As noted above, since the proposal of this rule, the USDA has promulgated an interim rule prohibiting downed cattle from being slaughtered and used in human food. The Department, when proposing the rule, did not intend for downed animals to be transported to be sold at livestock markets, and notes that the practice is that downed cattle are almost always euthanized on the farm. Because the rule is not clear that downed cattle may not be transported to be sold at livestock markets, the Department will propose, in a notice of proposal published elsewhere in this issue of the New Jersey Register, an amendment to the rule to prohibit transport of downer cattle to livestock markets.

N.J.A.C. 2:8-2.6(a)3i

COMMENT: In the event an animal suffers accidental injury, it should receive individual treatment designed to minimize pain and suffering. Injured animals should not be transported, and they should be housed separately from healthy animals. If the injury is serious enough to require it, the animal should be euthanized on the farm or ranch by a trained person.

RESPONSE: The rule, at N.J.A.C. 2:8-2.6(a), requires sick or injured cattle be promptly treated or humanely euthanized. The Department will not disallow transportation as this may prohibit the animal from receiving treatment from a veterinarian if the animal needs to be transported to a veterinary clinic. As noted above, if there is a need to transport the animal, the rule requires that the non-ambulatory animal be separated from healthy animals. The Department will propose a regulation, in a notice of proposal published elsewhere in this issue of

the New Jersey Register, to prohibit the transport of downer cattle to livestock auctions.

N.J.A.C. 2:8-2.6(a)3iv

COMMENT: The proposed rule should define medical care more clearly and require that medical care be designed to alleviate suffering. Moreover, the word “survive” should be replace with “recover and regain their ability to stand and walk.”

RESPONSE: In addition to the provision which requires appropriate medical care, the rule (N.J.A.C. 2:8-2.6(a)3v) states that nonambulatory disabled cattle and other animals unable to move “[s]hall be handled humanely at all times even if they are to be slaughtered or euthanized so as not to cause unnecessary pain and injury” and of N.J.A.C. 2:8-2.6(c), “proper medical care for the diagnosis or management of injury or disease must be provided to sick, injured or non-ambulatory disabled cattle” Given the vast scope of disease and injury possibilities, it is not practical to provide a more specific definition of medical care which must be appropriate to the condition. Further, the Department notes that the types and dosages of medication provided to animals are regulated by the United States Food and Drug Administration. It would not be appropriate to replace the word “survive” with “recover and regain their ability to stand and walk” as the suggested language is more limiting.

COMMENT: This regulation is inconsistent with many newly-developed industry practices and would permit reversion to cruel treatment of injured animals. Under this regulation a “downed” animal who is perceived to be behaving as if under

anesthesia - in other words who is not actively resisting handling - may be dragged, shoved, beaten and otherwise tormented.

RESPONSE: The Department disagrees that the current rule allows a nonambulatory animal to be mishandled. As stated in N.J.A.C. 2:8-2.6(a), sick or injured cattle should be promptly treated or humanely euthanized. As stated in section N.J.A.C. 2:8-2.6(a)3, non-ambulatory disabled cattle and other animals unable to move as defined by 9 CFR 301.2 shall be separated from normal ambulatory cattle at all times during transport so that normal ambulatory cattle do not injure the disabled cattle; shall not be dragged while conscious except when necessary to provide life saving treatment, although cattle in a state equivalent to surgical anesthesia may be dragged, and disabled cattle shall be moved as safely as possible to minimize injury to the animal. An animal “who is not actively resisting handling” would not reasonably be considered to be in a state equivalent to general anesthesia, and therefore it could not be dragged.

COMMENT: Many states and the European Union have determined that failing to provide adequate veterinary care to an animal is cruel, inhumane and illegal.

RESPONSE: The proposed regulations provide for adequate veterinary care. N.J.A.C. 2:8-2.6(a) requires that all sick or injured cattle must be promptly treated or humanely euthanized. Also, proper medical care for the diagnosis or management of injury or disease must be provided to sick, injured, or non-ambulatory disabled cattle N.J.A.C. 2:8-2.6(c).

N.J.A.C. 2:8-2.6(b)

COMMENT: The rule applied to each species that sick, injured and dead animals must be removed from contact with live animals within 24 hours to too permissive and may be longer during emergencies. The time frame should be reduced, for example, where a carcass poses a health risk to other animals.

RESPONSE: The rule requires that dead cattle be promptly removed from contact with live cattle within 24 hours. Depending on the environment, some animals are checked once a day during feeding time. Moreover, producers may not know the precise time of death. The 24-hour time frame, which is the maximum time frame, will ensure prompt removal. The Department notes further that owners will likely be aware of conditions of their animals and that they are required to ensure sick or injured animals are treated or humanely euthanized. While there may be “extraordinary or catastrophic conditions,” N.J.A.C. 2:8-8.2(b), that may alter the time frame, the Department believes its approach is sound.

N.J.A.C. 2:8-2.6(c)

COMMENT: Proposed N.J.A.C. 2:8-2.6(c) states “proper medical care for the diagnosis or management of injury or disease must be provided to sick, injured, or non-ambulatory disabled cattle.” “This statement is vague and inadequate. It does not appear to require debilitated animals to receive medical care for the sake of their welfare. Instead the animals are to receive medical care only for the diagnosis or management of injury or disease.”

RESPONSE: The Department does not know how one can improve a sick or injured animal’s welfare and health without a diagnosis of the injury or disease.

The diagnosis will contribute to the proper management of the injury or illness which will address the animal's welfare.

COMMENT: The commenter cites to an Ohio case in which it asserts that financial considerations for withholding medical treatment are not a valid excuse for inhumane conduct.

RESPONSE: The case cited by the commenter concerned the actions of the owner of a pet dog which had disease as a sequelae to heartworm infestation. An animal shelter volunteer, with permission from the owner, took the dog to a veterinarian who euthanized it. Upon complaint of animal cruelty, the court found that failure to seek veterinary care for the dog violated Ohio's laws. The regulation provides that an owner shall obtain appropriate medical care for a non-ambulatory disabled animal if the animal can reasonably be expected to survive and the owner chooses to attempt treatment. The case cited allowed for euthanasia. N.J.A.C. 2:8-2.6(a) requires that all sick or injured cattle must be promptly treated or humanely euthanized. Also, proper medical care for the diagnosis or management of injury or disease must be provided to sick, injured, or non-ambulatory disabled cattle. (N.J.A.C. 2:8-2.6(c))

N.J.A.C. 2:8-2.6(f)

COMMENT: Commenter states that there are no guidelines to determine what routine husbandry practices are beneficial and necessary and that the regulations do not require an evaluation of the humaneness of a practice; if the services of a veterinarian are not required, the type of procedure and age at which it should be performed should be delineated.

RESPONSE: The Department, after review of comments received, has determined that its definition of routine husbandry practices needs clarification. Simultaneously with this adoption, published elsewhere in this issue of the New Jersey Register, the Department will propose to amend the definition of “routine husbandry practices” to refer to techniques commonly taught by veterinary schools, land grant colleges, and agricultural extension agents for the benefit of animals, the livestock industry, animal handlers and the public health and are employed to raise, keep, care, treat, market and transport livestock. The benefits to the animal and the herd, the need for specific training (for example, a veterinarian) and the humaneness of the practices are core components of the methods taught by those institutions. In the interim, the rule, which requires that knowledgeable individuals perform the procedures, given the age, breed, physiologic condition, etc. of the animal, in a way to minimize pain, is appropriate. It is not practical or necessary to delineate all procedures and ages for each breed or species; however, the amendment to the rules will address the commenters’ concerns.

COMMENT: The entirety of N.J.A.C. 2:8-2.6(f) is completely inconsistent with internationally recognized humane farming standards and should be struck from the regulations.

RESPONSE: The subsection permits routine husbandry practices such as dehorning or disbudding, removing extra teats, tattooing, branding and castrating. Because the commenter did not cite to specific standards, the Department cannot

respond particularly. The Department does not agree with the statement. It has addressed specific practices in the comments below.

COMMENT: Proposed N.J.A.C. 2:8-2.6(f) states that “nothing in these rules shall prohibit dehorning, debudding, removing extra teats...provided they are preformed in a sanitary manner by a knowledgeable individual and in such a way as to minimize pain.” The rule does not encourage alternatives to some of these procedures nor does it require anesthesia.

RESPONSE: The Department’s regulation specifically allows these practices when performed by knowledgeable individuals, in a sanitary manner, and in a way to minimize pain. The rule neither encourages nor discourages alternatives to the listed procedures and notes that owners may choose to use alternative procedures provided the rule’s requirements are met. These procedures, which are taught at veterinary schools, land grant colleges, and by agricultural extensions, when performed as required by regulation, do not constitute inhumane treatment. Use of anesthesia in certain animals and for specific procedures may be contraindicated. Indications for utilization of anesthesia for different procedures is part of the training and education provided by those institutions.

COMMENT: Due to the indisputable pain and suffering that occurs when castration is performed in the absence of analgesics, including on young calves, and including via rubber rings, and due to the significantly higher incidence of post-operative morbidity and even mortality, when performed by unlicensed practitioners, this proposed new rule will lack credibility as long as castration

other than by licensed veterinary practitioners employing appropriate analgesics is permitted.

RESPONSE: The Department's rule requires that castrations be performed by a knowledgeable individual in a sanitary manner and in a way to minimize pain. Persons other than licensed veterinarians possess the knowledge and skills to perform this procedure. Moreover, the practice may be performed without analgesics and still be considered humane. The Department does not agree with the commenter's assertion that there is a "significantly higher incidence of post-operative morbidity and even mortality when performed by unlicensed practitioners." Castration is a routine husbandry practice taught by veterinary schools, land grant colleges and agricultural extension agents. When performed in accordance with the regulation and as taught by those schools, the procedure is humane.

COMMENT: Dehorning adult cattle without anesthesia should be prohibited.

RESPONSE: According to the rule, the procedure must be performed in a manner that minimizes pain. The Department is amending its definition of routine husbandry practices to include those procedures commonly taught at veterinary schools, land grant colleges, and agricultural extension agents. The Department expects procedures to be performed consistent with those teachings. To the extent anesthesia is recommended, it should be used.

COMMENT: Commenter recommends incorporating the Australian Code provisions relating to dehorning into the rule. Those provisions include: the age at which the procedure should be done; follow up care; tipping (ends of the horns

removed) without anesthetic for older animals; types of dehorning methods; and consideration of use of different breeds that would make dehorning unnecessary.

RESPONSE: The commenter, as has the Department, recognized the need for dehorning. It is needed in many circumstances for both the welfare and safety of the animals and also for the safety of the human caretakers. Horns can cause severe injuries and can cause an animal to become tangled leading to injuries. Specificity suggested by the commenter is not necessary given the Department's intention to clarify the definition for routine husbandry practices and the rule's requirements as to how procedures must be performed.

COMMENT: Dehorning should be prohibited or discouraged.

RESPONSE: The rules allow for certain practices which are commonly taught by veterinary schools, land grant colleges and agricultural extension agents, for the benefit of animals, the livestock industry, animal handlers and the public health and are employed to raise, keep, care, treat, market and transport livestock. They also require that the procedures be done in such a way to minimize pain. Dehorning, in many circumstances, is needed for both the welfare and safety of the animals and also for the safety of the human caretakers. Horns can cause severe injuries and can cause an animal to become tangled leading to injuries. The Department declines to prohibit or discourage the practice.

COMMENT: Commenters state that the regulations should prohibit husbandry practices, which are cruel mutilations and characteristic of inhumane treatment.

RESPONSE: The Department does not accept the commenter's characterization of husbandry practices taught by veterinary schools, land grant colleges, and

extension agents for the benefit of the animals, livestock industry, animal handlers and public health as cruel mutilations. When performed as set forth in the regulations and as taught by those institutions, such practices are not inhumane.

COMMENT: Commenters state tail docking of cattle is inhumane and is done for convenience of producers, is not related to animal welfare, and should be prohibited.

RESPONSE: As with other routine husbandry practices, the Department recognizes that there is on-going research within the scientific community and industry. While the Department discourages the routine tail docking of cattle, it recognizes that the practice, which is taught at veterinary colleges, land grant colleges and universities and by extension agents, when performed consistent with these regulations (by a knowledgeable person, in a sanitary manner, and in a way to minimize pain) has not been shown to be inhumane. An increased response in the physiologic parameters used to measure stress has not been shown. However, the procedure remains controversial as the purported benefits and impact on the welfare of the cow (based on limitation on the tail's function as a result of docking) have not been sufficiently documented in studies.

A review of current literature has found that cattle having their tails docked and those which do not, show little if any difference in regard to behavior and physiological effects. This suggests that the docking procedure causes minimal and transient discomfort at most. The role of chronic pain is currently unknown although there appears to be no long-term effects on feed intake or milk production.

Tails of milking cows may be carriers of fecal matter, mud, and other contaminants which become a nuisance in the milking parlor. It has been hypothesized that disease may be transmitted from pathogens carried on the tail to the employees and equipment during routine milking procedures. Benefits that have been attributed to tail docking include enhanced udder and milk hygiene. However, research in this regard has called those benefits into question. Some peer-reviewed scientific studies and government-sponsored research suggest there is no benefit to docking normal, healthy tails of dairy cattle. In addition, although cows with docked tails may be cleaner in general, their udders are not cleaner; these cows have not demonstrated a lower incidence of mastitis, nor does their milk have a lower somatic cell count, except in one study, where there was a slight increase in non-docked cows. Studies in the scientific community related to enhanced udder and milk hygiene are continuing, as are studies related to presence of coliform bacteria on hides from flicking tails in non-docked cattle. Studies on the impact of docking on environmental coliform bacteria have not been performed.

The Department's current position on tail docking recognizes that more work is needed to fully understand the welfare, food safety and milker comfort implications of dairy cattle tail docking. It encourages research studies that use scientifically valid methods with clinically relevant outcomes reported in peer-reviewed publications. Specifically, areas which should be studied include: behavioral aspects of communication using the tail; fly elimination; environmental contamination; and milker comfort. The Department will make no

change to the rule at this time, as research has not shown the practice of tail docking to be inhumane. Until consensus can be reached, the Department agrees with the recommendation of the American Association of Bovine Practitioners that if tail docking is to be done, it should be done as young as practical using appropriate techniques. Also, the Department expects a farm to provide appropriate management when needed to eliminate flies. The Department will continue to monitor the scientific findings and pursue additional rulemaking as appropriate.

COMMENT: Commenter states that tail docking risks insect infestation and results in the administration of antibiotics that wind up in the food chain and should be prohibited.

RESPONSE: As noted above the Department discourages the practice of routine tail docking, but, pending further research, will not prohibit it. The Department does not agree that tail docking will cause or result in insect infestation. Moreover, because the environment must support animal health, owners are expected to manage facilities to mitigate such infestation and to take measures to prevent insect infestation of the animal. Use of antibiotics in animals, as to type, dosage and withdrawal times, is governed by the FDA which is responsible to ensure that the nation's food supply is not adversely affected by their use. The Department notes that antibiotics are rarely, if ever, used in connection with this practice.

COMMENT: To uphold the highest animal welfare standards, tail docking should be prohibited except where necessary for udder health or when otherwise prescribed by a registered veterinarian.

RESPONSE: The Department agrees that tail docking, when necessary for udder health or when otherwise proscribed by a veterinarian, is appropriate. While discouraging routine tail docking, the Department will not, at this time, limit the procedure to issues related to udder health or when prescribed by a veterinarian so long as the procedure is performed consistent with these rules.

COMMENT: The Department should recognize the link between the clipping and cutting of dog's ears and the clipping and cutting of cow's ears and should incorporate language that requires anesthesia.

RESPONSE: Routine animal husbandry practices must be performed by a knowledgeable individual in a way to minimize pain. To the extent that marking cattle for identification is done, owners must comply with N.J.S.A. 4:22-26(s), which restricts the practice of cutting ears, and with the rules. Under certain conditions, giving anesthesia may increase stress in the animal. As such, the Department will not require use of anesthesia.

COMMENT: Teat removal is an inhumane practice during which an animal's breast, determined to be excess, is forcibly removed (the breast including all attendant tissue) resulting in the need for antibiotics which wind up in the food chain and should be prohibited.

RESPONSE: Teat removal is a practice performed on young animals who have more than the four normal teats. The extra teats are non-functional and have no

underlying mammary tissue. The teat is not the same as a human breast. Extra teats are removed because they are susceptible to an introduction of bacteria or other agents. Extra teats are also removed to prevent calves from non-productive suckling in the future or from interfering with the proper use of milking equipment. Use of antibiotics in animals, as to type, dosage and withdrawal times, is governed by the FDA which is responsible to ensure that the nation's food supply is not adversely affected by their use. The Department notes that the procedure rarely results in infection or the need for antibiotics.

COMMENT: Commenters seek to prohibit branding, including face branding and chemical branding. One commenter asserts branding cause pain, requires the animal to be treated with antibiotics, and that, because of confinement, the animal could not alleviate its pain.

RESPONSE: As stated in the American Veterinary Medical Association policy on animal welfare, the Department believes that permanent identification of animals is essential in protecting the nation's livestock industry and public health. The Department notes that branding would be considered a routine husbandry practice and must be performed by a knowledgeable individual, in a sanitary manner and in a way to minimize pain. Branding or marking is required for the sale or movement of livestock in certain states. Appropriate methods and procedures are taught in veterinary schools, land grant colleges, and agricultural extension agents. While face branding had previously been mandated by the Federal government to identify diseased cattle, that practice is no longer mandated. Face branding is not taught as a routine husbandry practice and as such

would not be contemplated by these regulations. The Department further notes that dairy cattle are not routinely branded and that antibiotics are not routinely administered after branding. The Department recognizes that further studies in this area are ongoing and that the AVMA recommends that high priority be given to the development of alternatives to hot-iron branding.

N.J.A.C. 2:8-2.7

COMMENT: Exceptions should be deleted. Broad exceptions undermine the effort to establish humane criteria for the purpose of ensuring animal well-being.

RESPONSE: The exceptions are appropriate. The Department does agree that N.J.A.C. 2:8-2.7(a)1, which permits an exception for animals under the direct care of a veterinarian who can provide a medically supportable written explanation for the condition, should be deleted. The Department notes that veterinarians are licensed by the State Board of Veterinary Medical Examiners and must treat animals within the standard of care in this State and comply with the ethics, standards and laws set forth in N.J.S.A. 45:16-1 et seq. and N.J.A.C. 13:44. The Department believes it is appropriate where an animal is under the care of a professional to defer to the veterinarian's professional judgment.

The second exception mirrors Federal law regarding transportation of animals and the Department has determined that use of this standard is appropriate. The third exception, as amended on adoption, to delete the erroneously incorporated "and water," is also consistent with Federal law.

COMMENT: This regulation permits the weak standards to be weakened at the will and pleasure of the State Veterinarian and should be struck.

RESPONSE: The Department does not understand the comment. There is no mention of the State Veterinarian in this section.

COMMENT: Commenter asserts that the USDA has determined that 49 U.S.C. § 80502 and its regulations were written to apply only to transfer by a railcar and that the Twenty-Eight Hour Law does not apply to transport by trucks. At a minimum, the regulations should specify that “vehicle or vessel” includes trucks.

RESPONSE: The Twenty-Eight Hour Law, 49 U.S.C. § 80502, does apply to transport by trucks. The law was amended in 1994 to include commercial transport by trucks. Prior to that, the law referred to transport by rail. As such, no change is necessary.

COMMENT: The proposed standards would allow animals to be held in a pen or cage without food for 24 hours followed by 28 hours without either food or water. All animals may be confined for 36 consecutive hours upon the request of the owner or person having custody of the animals. This is excessive.

RESPONSE: The rule at N.J.A.C. 2:8-2.7(a)3i states that time spent in a vehicle or vessel shall not be included in determining the 24 hours period of confinement. As such, the animals would not be without food for that period. The commenter notes animals may be confined for 36 hours at the request of the owner. The Department believes the commenter is referring to 49 U.S.C. § 80502(a)(B) which permits the 28-hour period to be extended upon request. Because the Department’s rule refers to Federal law, it is possible that there will be occasions where such a request is made. The Department will not promulgate a rule that contradicts the Federal law in this area.

COMMENT: The proposed regulations specify that “nothing herein shall prohibit the confinement of cattle in holding cages or pens where food and water may be withheld for up to 24 hours in accordance with 9 CFR Part § 313.2.

RESPONSE: The Department is aware that 9 CFR Part § 313.2 states that animals shall have access to water. The wording in the proposed rule was in error and has been corrected on adoption to delete “and water.”

COMMENT: The commenter recommends adoption of the Australian Model Code of Practice for Cattle and states that cattle should be watered every 12 hours and calves less than one month old should not go for more than 10 hours without suckling or drinking.

RESPONSE: The Department has reviewed the Australian Code which is a best management practice guide. Those standards are not necessary to ensure humane treatment of cattle during transport. The rule requires that cattle transported for any purpose must be handled (loaded and off-loaded) and transported in a manner that minimizes injury, illness and death. The animals shall be transported with minimal delay and provided with adequate ventilation. The time allowed for the transport of animals is 28 hours in accordance with Federal law. The Department notes that while in holding pens, animals must have access to water and, if held longer than 24 hours, access to feed. As to transportation of calves, the Department recognizes that those animals may need to be transported in a different manner. The rule’s requirement that the age, breed, etc., of the animal be considered in determining compliance with these standards would require owners

and transported to adjust practices to ensure the health of the animal and to minimize injury, illness and death.

COMMENT: The current draft regulation's failure to meet the voluntary and minimal standards being followed by producers supplying major fast food chains is entirely arbitrary and unjustified.

RESPONSE: The Department disagrees that its use of a standard different from voluntary, best management practices currently followed by some producers in response to requests from fast food industry is "entirely arbitrary and unjustified." In formulating its standards, the Department reviewed over 400 sources including university publications, textbooks, scientific articles, government guidelines and industry standards. While some producers may choose to adopt such voluntary standards for their own operations, the Department has determined that the standards of these regulations draw an appropriate base line for humane treatment of cattle. To the extent producers choose to follow best management practices, the Department encourages them to do so.

N.J.A.C. 2:8-2.7(a)2 and 3

COMMENT: New Jersey should not rely on an archaic provision of the U.S. Code (49 U.S.C. § 80502) in promulgating regulations relating to transport in 2003, but should promulgate its own regulations relating to the humane transport of farmed animals based on modern science.

RESPONSE: The Department has reviewed scientific resources and has consulted with the New Jersey Agricultural Extension Station regarding transportation of cattle and has determined that these rules will not result in

inhumane treatment of the animals. Moreover, by adopting the standards set forth by the Federal government related to transportation of animals, the Department will avoid challenge to its rules on placing an improper burden on interstate commerce.

Horses (Subchapter 3)

COMMENT: The proposed new rule has several commendable areas relating to horses, for example, “proper medical care for the diagnosis or management of injury or disease must be provided to sick, injured, or non-ambulatory disabled horses.”

RESPONSE: The Department thanks the commenter for its support.

N.J.A.C. 2:8-3.1(a)1

COMMENT: Commenters state that while some of the principles listed in this section are appropriate in determining equine welfare, others “suggest that welfare is held captive to economic concerns and production goals. For example, an animal’s well being could be negatively impacted by it’s production level,” and therefore, “production level” should be deleted.

RESPONSE: The Department disagrees with the commenter. The rule’s reference to “production level/stage of development of the animal” is one of the factors to be considered in determining whether the rules’ standards have been met. Given that the rules govern horses raised for production, its inclusion here is both necessary and appropriate. The rules reflect the Department’s responsibility to promote animal safety, health and well being while simultaneously fostering

industry security, sustainability and growth. It has written the standards to meet those complementary objectives. Production is enhanced by humane treatment. In order to provide standards for humane treatment, the Department relied heavily on expert scientific and medical opinion.

COMMENT: The proposed standards to assess animals individually is rendered meaningless by permitting body condition scores and feeding and watering practices wholly insufficient to ensure animal health.

RESPONSE: The Department disagrees that its standards permit practices that would be injurious to animal health. The regulations require that each animal be assessed individually and be provided with daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition and access to water in sufficient quality and quantity to satisfy the animal's physiologic needs. Body condition scores are one criterion to be used to monitor animal health. The scores established in the regulation and the direction to take steps to alter the management of an animal when a score falls below that set forth in the rules are appropriate.

N.J.A.C. 2:8-3.2(a)4

COMMENT: The regulations should define "reasonable time" in which an animal is restored to an acceptable body condition.

RESPONSE: The variability of the conditions and the environments in which animals are raised require a case-by-case determination of the amount of time needed to reverse the condition. As such, the Department cannot require specific timeframes. The rules mandate that management practices be altered and

“diligent” efforts must be used to restore the body condition. (N.J.A.C. 2:8-3.2(a)4i). Further, N.J.A.C. 2:8-3.6(a) requires that sick or injured horses be promptly treated or humanely euthanized.

COMMENT: The proposed standards allow horses to be maintained at an unacceptably low level while on the farm.

RESPONSE: BCS systems were designed for use in a production environment, not as humane standards or guidelines. Body condition scores should be used along with other measurements in determining neglect or abuse. The intent of the regulations was to use BCS as one of a number of factors in assessing inhumane or cruel treatment. A low score, by itself, does not necessarily indicate neglect or abuse. Low body condition scores may be an indication of severely worn teeth due to old age, lameness, disease, etc. Low scores may call for immediate attention, but in numerous cases do not indicate abuse.

The species-specific rules require that each animal be assessed individually and that each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of adequate body condition. If a horse is unable to maintain the minimum body condition set in the rule due to group feeding practices, it must be fed in a manner that allows it to maintain an acceptable BCS (N.J.A.C. 2:8-3.2(a)6). The rules do not allow horses to be kept in a sustained state of emaciation. The standards mandate that if the BCS drops below 2, the horse’s management is altered to improve its condition. The Department does not envision that owners will deliberately fail to feed their horses “in preparation for market,” a term created by the commenter.

COMMENT: The section should include a requirement for veterinary oversight during the restoration time.

RESPONSE: The rules mandate that management practices must be altered and “diligent” efforts must be used to restore the body condition. (N.J.A.C. 2:8-3.2(a)4i.) Further, “[s]ick or injured horses shall be promptly treated or humanely euthanized” (N.J.A.C. 2:8-3.6(a)) and “[p]roper medical care for the diagnosis or management of injury or disease must be provided to sick or injured animals.” (N.J.A.C. 2:8-3.6(c)). The regulation, consistent with N.J.S.A. 45:15-8.1, permits owners to administer to the ills and injuries of their own animals. N.J.A.C. 2:8-3.6(c)1. While there are occasions when veterinary care will be necessary, the Department declines to identify specific circumstances under which such care is mandated due to the broad spectrum of illnesses and injuries and the varying capabilities of owners to treat such illnesses or injuries.

COMMENT: Several states and countries have all recognized the need for sufficient food for an animal at all times and that the deprivation of food is inhumane. The regulations should be revised to require that all horses are fed at least once a day and provided with a diet appropriate to their age, weight, and behavioral and physiological needs.

RESPONSE: The Department agrees and notes that its rules require that each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of adequate body condition. In addition, the rules require that each animal be assessed individually and each standard, including feeding, shall

take into account the age, breed, type, physiological condition, size, production level, etc. (N.J.A.C. 2:8-3.1 and 3.2).

N.J.A.C. 2:8-3.2(a)1

COMMENT: Proposed N.J.A.C. 2:8-3.2(a) should address the importance of salt licks as well as balanced vitamin/trace minerals or high fat diets which may enhance the animals well being.

RESPONSE: The Department declines to codify all of the available feed components. To do so would mean to codify exhaustive lists of every mineral, protein, digestible energy level, etc., of every feed source available. Further such a list would preclude the use of new and specially developed feed sources from being utilized where appropriate. The Department notes that owners frequently provide salt licks for their horses.

This rule considers animal welfare not only in the context of each species but also in the context of each individual animal. The rule states that each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of adequate body condition. In addition the rules require that each animal be assessed individually.

N.J.A.C. 2:8-3.2(a)2

COMMENT: The wording of this section should not be “BCS” as that refers to body condition score and a weight is not a score. Body condition would be more appropriate in this context.

RESPONSE: The Department notes the error and agrees that the rule should reflect body condition. The correction is being made on adoption.

N.J.A.C. 2:8-3.2(a)2i

COMMENT: Commenter objects to the use of weight alone to establish body condition and states that consideration must be given to age, breed, etc.

RESPONSE: The Department agrees and notes that its regulation requires that age, breed, type, physiologic condition, size, production level, and stage of development of the animal must be taken into account to assess compliance with any of the standards (N.J.A.C. 2:8-3.1(1)). This, combined with weighing the animal as allowed in N.J.A.C. 2:8-3.2(a)2i, provides an appropriate method to assess body condition.

N.J.A.C. 2:8-3.2(a)2ii

COMMENT: The reference to Carroll and Huntington is obsolete and the rule refers to a system that is not this 1 to 5 grading chart. The Department should use the 1 to 9 scale in Henneke. (Henneke, D.R., G.D. Potter, J.L. Kreider and B.F. Yeates "A scoring system for comparing body condition in horses," Equine Veterinary Journal, 16:371, 1983). This is the most commonly used scale and is taught in the National Equine Investigations Academy and in the National Cruelty Investigations Academy. In using Carroll and Huntington, a BCS of 2 may be too high.

RESPONSE: The Department, in considering materials for inclusion in the equine section, reviewed the available BCS systems for horses and decided that the

Carroll and Huntington version with the accompanying schematic would be easier for non-professionals to utilize when evaluating BCS in horses in alleged cruelty cases. Although it recognized that the Henneke system was available, the Department noted enforcement officials would not necessarily possess a sufficient level of knowledge or expertise to employ the Henneke system. A score of 2 on the 0 through 5 Carroll and Huntington scale is an appropriate point at which management practices should be altered.

N.J.A.C. 2:8-3.2(a)4ii

COMMENT: BCSs lower than 2.0 should not be permitted. “Other factors” should not be an acceptable reason for lower BCSs, as this could include virtually any cause. Similarly, lower BCSs at market, or “in preparation for market,” which would doubtless be used as an excuse by some stables, should not be an acceptable reason for lower BCSs.

RESPONSE: There are many reasons why body fat reserves will decline other than neglect or abuse. Naturally occurring events such as lactation, aging, etc., as well as certain diseases may cause a decrease in body condition. The comments suggest that one could prevent all of these situations. Many conditions are able to be reversed with proper treatment or management.

The species-specific rules require that each animal be assessed individually and that each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of adequate body condition. If a horse is unable to maintain the minimum body condition set in the rule due to group feeding practices, it must be fed in a manner that allows it to maintain an acceptable BCS

(N.J.A.C. 2:8-3.2(a)6). The rules do not allow horses to be kept in a sustained state of emaciation. The standards mandate that if the BCS drops below 2, the horse's management is altered to improve its condition. The Department does not envision that owners will deliberately fail to feed their horses "in preparation for market," a term created by the commenter.

COMMENT: The rule should prohibit a BCS of 1 at market. A horse with a BCS of 1 is in poor condition.

RESPONSE: The rule generally requires a BCS of 2.0 (on a scale of 0 to 5) for horses and recognizes that horses' scores, on occasion may fall below a 2.0. Owners are required to alter their management practices to improve the body condition of the animal. At times, it may be necessary to transport a horse with a score of less than 2.0 to market, where it may be purchased for slaughter or by another owner who will be responsible to restore the animal's body condition. The rule additionally recognizes that horses coming into the State for sale may have a BCS of less than 2.0. The rule does not condone a BCS of 1.0 as evidenced by the remainder of the section as well as the requirement that sick or injured horses be promptly treated or humanely euthanized.

COMMENT: Proposed N.J.A.C. 2:8-3.2(a)4ii permits a BCS of 1 at market, which is contrary to N.J.S.A. 4:22-21 which states: "[a] person who shall receive or offer for sale a horse that is suffering from abuse or neglect, or which by reasons of disability, disease, abuse or lameness or for any other cause, could not be worked, ridden or otherwise for show, exhibition, or recreational purposes, or

kept as a domestic pet without violating the provisions of this article or any law relating to cruelty to animals shall be guilty of a disorderly persons offense.”

RESPONSE: The Department is aware of the restrictions on sale of horses set forth in N.J.S.A. 4:22-21 and notes that its rule will help ensure that horses do not suffer from abuse or neglect and those suffering from illness or injury be promptly treated or humanely euthanized. The Department notes that euthanasia may include slaughter. The rule, therefore, does not contradict N.J.S.A. 4:22-21. That law prohibits the purchase or sale of abused, lame or sick animals which could not be used without violating animal cruelty laws. This rule requires a sick or injured animal to be slaughtered, euthanized or promptly treated. To the extent an owner violates these rules or any other animal cruelty laws, that owner is subject to punishment.

N.J.A.C. 2:8-3.2(a)6

COMMENT: No mention is made in the proposed standards of the need for each animal to have sufficient room while eating in order to prevent conflict.

RESPONSE: The Department has not mandated specific space requirements for feeding areas. The rules require daily access to sufficient and nutritious feed to maintain an adequate body condition and, if group feeding practices cause an animal to fail to maintain an adequate body condition, that animal must be fed in a manner that will allow it to maintain an adequate body condition.

N.J.A.C. 2:8-3.3(a)1

COMMENT: The practice of withholding adequate water from animals has been deemed cruel and illegal in states, the European Union and Canada and should not be endorsed in the draft regulations.

RESPONSE: The Department agrees that withholding sufficient quantities of water to support the animals' physiologic needs would be inhumane and has required that horses have daily access to water in sufficient quantity and quality to satisfy the physiologic needs as evidenced by the animal's hydration status.

COMMENT: Proposed N.J.A.C. 2:8-3.3(a)1 purports to address horses' access to sufficient quantity and quality of water according to a horse's hydration status. Access to water should not depend on the hydration status of horses. Horses must have access to sufficient quantity and quality of water.

RESPONSE: As noted above, the rule states that each animal shall be assessed individually and have daily access to water in sufficient quantity and quality to satisfy the physiologic needs as evidenced by the animal's hydration status. This is read in conjunction with the requirement that the age, breed, type, physiologic condition, size, production level, daily maintenance requirements and environment be considered. The modifying phrase is appropriate and necessary to give guidance to owners and enforcement authorities. The Department disagrees that there will be many divergent interpretations of physiologic needs as there are well established medical criteria to determine hydration status.

COMMENT: The rule should define how and when hydration status is measured. Hydration status can be estimated in a number of ways, but the only one readily available to caretakers, animal control officers, or livestock investigators is

physical examination, which requires knowledge, is partly subjective, and will not detect mild dehydration. Standards should establish a minimum frequency of watering and amount per body weight. National Research Council guidelines can be used to establish appropriate minimums.

RESPONSE: The Department agrees that physical examination will often be the way in which hydration status is assessed. The Department will facilitate training for persons who will make such assessments. Use of medical criteria will minimize the subjective calls made by the inspector. The Department notes that a veterinarian may be employed to provide a definitive diagnosis regarding adequate hydration status. The Department does not believe there is a need to establish minimum frequency watering schedules as suggested. By requiring daily access to water in sufficient quality and quantity to satisfy physiologic needs, an appropriate guideline has been established. Owners are free to use NCR guidelines to determine watering schedules.

N.J.A.C. 2:8-3.3(a)2

COMMENT: The section should be amended to require that all water receptacles be kept clean and free of contaminants and be positioned or affixed to minimize spillage, shall be cleaned once a day, and automatic watering systems be substituted where possible.

RESPONSE: The Department agrees that water receptacles shall be maintained in an appropriately clean condition. However, the proposed rule states that each horse shall have daily access to water in sufficient quantity and quality to satisfy the animal's physiologic needs. An animal could not maintain an adequate body

condition in the absence of sufficient water. The Department, given the variety of environments in which horses are maintained (for example, natural settings where streams or springs provide a water source), declines to mandate automatic watering systems, particular positions for water receptacles, or daily cleaning. The reference to “quality” of water addresses the issues raised by the commenter.

N.J.A.C. 2:8-3.4(a)

COMMENT: Remove the statement “detrimental to the animal’s health” after hyperthermia or hypothermia. Hyperthermia and hypothermia are always undesirable for both the animal’s health and welfare.

RESPONSE: By definition, hypothermia is a body temperature below what is normal for that species and hyperthermia is a body temperature above what is normal for that species. (As noted, and for the reasons set forth above, the Department is proposing an amendment to the definition of hyperthermia elsewhere in this issue of the New Jersey Register.) There are circumstances which may result in temporary slight changes in body temperature but which are not detrimental to the animal’s health such as exercise. The modifying term is necessary and appropriate.

COMMENT: The proposed standard requiring that each of the covered species be given “relief from the elements...that result in detrimental hyperthermia or hypothermia” is too vague. Guidance must be provided on the warning signs that might indicate the onset of these conditions.

RESPONSE: The Department expects persons responsible for the care and keeping of animals as well as those charged with enforcing these standards, will

have general knowledge of animal behavior and species characteristics. The Department stands ready to facilitate training that will enable people to identify the clinical parameters that would indicate hyperthermia or hypothermia. The Department, given variable in species, age, breed, production level, environments, declines to codify such guidelines.

N.J.A.C. 2:8-3.4(b)

COMMENT: Although proposed N.J.A.C. 2:8-2.4(b) suggests that natural features in the environment including “trees, land windbreaks...may provide shelter from the elements,” the regulations should require that horses be provided with shelter that keeps them dry and out of the wind during inclement weather, particularly extreme temperatures.

RESPONSE: The regulations require that the horses be provided an environment that provides relief from the elements such as excessive wind, excessive temperature and excessive precipitation whether with natural features or with constructed shelters. The rules provide an appropriate standard as it sets parameters for constructed shelters and enclosed yards. The Department declines to make the suggested change.

COMMENT: As written, this section fails to address extreme hot and cold weather relief for horses. Moreover, there are no engineering standards provided that would define what constitutes a shelter, which should include roof and sides, and address debris and waste.

RESPONSE: The proposed rule states that the horses’ environment must provide relief from the elements including excessive temperatures (N.J.A.C. 2:8-3.4a).

The rules regarding natural features and constructed shelters provide adequate standards. Moreover, requiring specific engineering standards may be unduly burdensome on owners. The Department notes constructed shelters must provide an environment that supports horse health.

N.J.A.C. 2:8-3.4(c)

COMMENT: Proposed N.J.A.C. 2:8-3.4(c) requires that horses be provided with an environment that supports horse health. The phrase “and their well being” should be added to the end of this sentence.

RESPONSE: The rule, in N.J.A.C. 2:8-3.4(c)1 requires constructed shelters to provide an environment to support horse health and specifies that the shelters have adequate space, be structurally sound, have a safe interior surface, and have natural or mechanical ventilation to provide air quality and maintain an environment suitable for horses. This, when combined with the General Provisions, N.J.A.C. 2:8-1.1(a), which states: “for purposes of these rules, an animal’s status or well-being shall be determined based on a holistic evaluation of the animal,” sufficiently addresses the commenter’s concern.

COMMENT: The proposed standard concerning appropriate shelter size is insufficient. In addition to being able “to stand, lie down, get up, rest, and move their heads freely,” all animals should be afforded space to turn around completely, as well as the freedom to do so.

RESPONSE: The Department expects that horse owners have basic knowledge of the animal’s behavior and health requirements needed to provide an environment to support a horse’s health (N.J.A.C. 2:8-3.4(c)5). The space

requirements set forth in the regulation are minimum requirements which have taken into account the expectation that horses will not be confined to those stalls permanently, without exercise. The Department notes that many shelters, for example, those housing race or show horses have significantly larger stalls. As such, the Department declines to modify its rule.

N.J.A.C. 2:8-3.4(d)1 and 2

COMMENT: The proposed standards are too vague regarding the nature of the “sharp objects or debris” to be “minimized” in an animal’s environment, stating only that they should pose an “actual threat” to animal health. The phrase “actual threat” should be better defined to preclude the possibility that animals would first have to be injured before action is taken by caretakers, animal control officers, or livestock inspectors.

RESPONSE: The rule is not vague or ambiguous. The rule’s requirement that sharp objects and debris that pose an actual threat to the horse’s health be minimized is an appropriate description of the types of hazards that should be addressed. Actual threat does not mean an animal must be first injured, rather, the term speaks to the likelihood that the animal will be injured given facts such as the size of the animal, amount of space available and time spent in environment. The rule specifically requires that if stationary objects which pose a risk of injury cannot be removed, reasonable efforts must be made to minimize contact by fencing off or covering the object or similar means. If objects are not stationary, the rule requires that actual threats to the animal’s health shall be minimized to reduce risk of injury. This construction recognizes that not all objects will present

an actual threat to the animal but requires the owner to take action to prevent harm.

N.J.A.C. 2:8-3.4(f)

COMMENT: This section fails to address the frequency that bedding is to be changed in order to be kept “reasonably clean” and fails to provide a standard for what constitutes “reasonably clean.” Lack of standards has the potential to create unhealthy environments.

RESPONSE: It is not practical to set specific standards on the frequency of bedding changes due to the variation between materials used, environment and species of equine involved. The rule provide for the humane care of horse with this standard by linking bedding changes to the animal’s health per N.J.A.C. 2:8-3.4(h). It states that bedding or matting shall provide an environment that supports horse health. The environment should be assessed by all of the standards in the rule.

N.J.A.C. 2:8-3.4(h)

COMMENT: Bedding or matting is a necessity for the comfort and health of horses and should be mandated; the regulation should specify exactly what is meant by “supports horse health.”

RESPONSE: Bedding or matting is a not a necessity for horses to be comfortable and healthy in all circumstances. For example, when horses are on pasture or when horses reside in the wild, they are not provided bedding or matting yet they may thrive. The rule further provides that dirt floors or rubber mats are

acceptable without bedding if adequate drainage is provided. The proposed rule requires an environment that “supports horse health,” meaning that the environment should not be deleterious to the health of the horse, for example, permitting bedding material to be contaminated with toxins or infectious material. Health status parameters can be assessed by individuals specifically trained in veterinary medicine.

N.J.A.C. 2:8-3.4(i)

COMMENT: Commenters object to N.J.A.C. 2:8-3.4(i) which permits horses to be tied using halters or neck bands in stalls or to stationary objects for up to 12 hours without lying down if feed and water are not available is inhumane. Commenters suggest specific times frames for confinement, feeding and watering.

RESPONSE: The rule is appropriate. Horses are anatomically equipped to be able to rest in a standing position. They have multiple structures which in combination are called a stay apparatus which allows the horse to rest in a standing position. As such the 12-hour limit without space to lie down or have access to feed or water will generally not adversely affect the horse’s health. N.J.A.C. 2:8-3.4(i) requires that a horse be able to lie down safely if tied for more than 12 hours.

COMMENT: Commenters are concerned that the rule would permit horses to be tied up indefinitely as long as they have access to feed and water and can lie down safely. One states use of halters and neck bands should be limited to time necessary for shoeing, veterinary care, examination or other need to temporarily immobilize the horse.

RESPONSE: Research has suggested that tethering certain horses for extended periods of time (up to two weeks) did not result in increased stress to the animal. The Department does not encourage long term or indefinite tethering of horses and notes that the animal's well being must be assessed holistically, in light of the rules. The Department does not agree that tethering should be limited as described by the commenter.

COMMENT: Tethering of horses is unacceptable.

RESPONSE: When done according to these rules, tethering does not constitute an inhumane treatment.

COMMENT: This section (N.J.A.C. 2:8-3.4) should be amended to address hoof care maintenance and to require trimming every six to eight weeks or as directed by an attending veterinarian. This subsection should be amended to require annual dental check-ups.

RESPONSE: The section on "keeping" (N.J.A.C. 2:8-3.4) covers the environment where the horse is housed. The health and related care of the horse is covered under N.J.A.C. 2:8-3.6, Care and treatment. The rule requires proper hoof care (N.J.A.C. 2:8-3.6(e)), and as pertains to horses for hire, requires routine hoof care (N.J.A.C. 2:8-3.6(d)). The trimming suggested by the commenter may not be necessary as proper hoof care varies by the type and use of the horse and the environment in which it is maintained. The need to address a horse's dental condition will similarly vary, depending on the age, breed, diet, and physical condition of the horse. Because the rule requires prompt treatment for sick or

injured horses, health issues related to hooves and teeth, as well as other body systems, will be addressed.

N.J.A.C. 2:8-3.5(a)

COMMENT: This provision should mandate appropriate humane training for all transporters in accordance with proposed section N.J.A.C. 2:8-8.1(b)1i.

RESPONSE: The rule's requirements for transportation of animals applies to transporters who must comply with those requirements. The Department expects persons responsible for the transport have basic knowledge of animal health and behavior. If training is necessary, the Department will facilitate such training but will not require it.

COMMENT: The provision should make clear that the owner of the animals is also responsible for the welfare of the animals at all times, including transport.

RESPONSE: The rule states that the driver of the transport vehicle and/or the person who is present in the vehicle for purposes of transporting the cattle shall be responsible for the welfare of the animals at all times during transport. This is consistent with the European Union, Canada and other countries. Owners are expected to select transporters who have appropriate knowledge of animal welfare and who will comply with the Department's regulations. Because owners have an interest in the well being of their animals during transport, they will take appropriate steps for the animals' welfare. The Department does not believe the suggested change is necessary.

N.J.A.C. 2:8-3.5(b)

COMMENT: Commenters assert that language “minimizes injury, illness and death” is vague and does not give producers or enforcement officials guidance to determine satisfactory outcomes.

RESPONSE: The rule specifically requires that handling and transporting be undertaken to minimize adverse affects on animals. Transporters or owners are expected to have basic knowledge of animal behavior and should identify conditions that are hazardous to animal health. The Department will facilitate training as necessary. Itemizing events or conditions that would minimize adverse events is a nearly impossible task given the various situations that arise during transport. The rule’s use of the term minimize, whose commonly understood meaning is “to reduce or to keep to a minimum,” (Webster’s New Encyclopedic Dictionary, Merriam-Webster, Inc., 2002), advises both owners and enforcement officials of the obligations imposed by the rules.

N.J.A.C. 2:8-3.5(c)

COMMENT: Commenters assert that the term minimal delay should be defined or that specific times should be mandated with adequate stops for rest and water.

RESPONSE: The rule requires horses to be transported in a manner that complies with 9 C.F.R. Part 88, Commercial Transportation of Equines to Slaughter. That rule states that, at a minimum, equines that have been on the conveyance for 28 consecutive hours must be offloaded and provided with feed and water and given the opportunity to rest for at least six consecutive hours. In addition, the owner or shipper is required to observe the animals “as frequently as circumstances allow, but not less than once every 6 hours, to check the physical condition of the

equines,... and to drive in a manner to avoid injury.” The Federal rules provide appropriate guidance for transport of horses. The word minimal shall be accorded its commonly understood meaning.

N.J.A.C. 2:8-3.5(d)

COMMENT: The rule should clarify “adequate ventilation” and should specify requirements for different weather conditions.

RESPONSE: The term “adequate ventilation” must be read in context of the complete rule which requires consideration of the animal’s size, age, breed, etc. and requires transport in a manner that minimizes injury, illness and death and provides relief from the elements that would result in hyperthermia or hypothermia. The Department notes 9 C.F.R. Part 88.3(a), which sets forth standards for conveyances, also uses the term “adequate ventilation.” Moreover, adequate ventilation is necessary to achieve acceptable air quality which the rule states would result in minimal irritation of the sensitive membranes of an animal’s mouth, eyes, nose, and respiratory tract caused by elevated levels of irritants in the air. The rule provides appropriate guidance for transporters and enforcement officials and addresses the concern of the commenters.

N.J.A.C. 2:8-3.5(e)

COMMENT: Remove the statement “detrimental to the animal’s health” after hyperthermia or hypothermia. Hyperthermia and hypothermia are never comfortable conditions and animals in hyperthermic or hypothermic conditions must be provided relief immediately.

RESPONSE: By definition, hypothermia is a body temperature below what is normal for that species and hyperthermia is a body temperature above what is normal for that species. (As noted, and for the reasons set forth above, the Department is proposing an amendment to the definition of hyperthermia elsewhere in this issue of the New Jersey Register.) Slight changes in body temperature may not be detrimental to the animal's health (for example, after exercise). Where such changes in temperature are detrimental, failure to provide relief would violate the rule. The modifying phrase is appropriate.

COMMENT: The proposed rule is too vague, and guidance must be provided on the warning signs (for example, hazardous body temperatures) that might indicate the onset of the conditions "hypothermia" or "hyperthermia".

RESPONSE: Hyperthermia and hypothermia are actual conditions which may impact an animal's health if the variation in body temperature is significant. Such warning signs may be evident from a physical examination of the animal (such as changes in heart rate, respiration rate, body temperature changes, etc.). Given variations in breed, species, age, physiologic conditions, the Department will not list such signs in its regulations but will facilitate training that will assist people in identifying the clinical parameters as necessary.

N.J.A.C. 2:8-3.5(f)

COMMENT: Proposed section N.J.A.C. 2:8-3.5(f) requires that horses be transported in accordance with 9 C.F.R. Part 88. These requirements are in direct contradiction to the standards set forth in N.J.A.C. 2:8-3.7(a)3.

RESPONSE: The rule requires that horses be transported in accordance with 9 C.F.R. Part 88, which requires horses to have access to feed and water after unloading. Citation to 9 C.F.R. Part 313.2 in the exceptions section was proposed in error as that Federal regulation does not apply to the transportation of horses. As the proposal gave notice to all parties that the Federal Transportation of Equines to Slaughter regulation (9 C.F.R. Part 88) applied to transport of horses including the requirements for feeding and watering, the Department will not adopt N.J.A.C. 2:8-3.7(a)2 and (a)3 which contradict that federal rule.

COMMENT: Commenters state that the transport times without food or water are too long and may compromise horse health.

RESPONSE: The Department has adopted the requirements of the Commercial Transportation of Equines to Slaughter, 9 CFR Part 88. Those Federal requirements reflect scientific studies which demonstrate that by providing horses access to food and water in the six hours prior to transport, horses may be transported for up to 28 hours without ill effects. When combined with the other requirements of the Department's rule and the Federal rule, including that the animal be fit to travel, the standards are humane and appropriate.

N.J.A.C. 2:8-3.5(f)

COMMENT: 9 C.F.R. Part 88 requires that after 2007, horses may not be transported in double-decker trailers. The Department should follow the precedent set by States like New York and Pennsylvania that have already banned their use.

RESPONSE: The standards for the transportation of horses provides for humane treatment by requiring that horses be transported in a manner that complies with 9 C.F.R. Part 88 and that they be handled in a manner that minimizes injury, illness and death; be provided with adequate ventilation; and be provided with relief from the elements. The Federal standards prevent overcrowding, provide specific space and construction requirements and will prevent the use of stacked level trailers after December 7, 2006. The Department notes that most transporters do not use such stacked trailers in or around New Jersey. These trailers are used for transport of horses to slaughter, which is not done in New Jersey. Because stacked trailers are prohibited in adjacent states, their use in this State will be limited or non-existent. Given the rule's requirements for humane treatment during transport, the Department does not believe a ban is necessary.

N.J.A.C. 2:8-3.5(g)

COMMENT: The language in N.J.A.C. 2:8-3.5(g) stating that food and water must be provided for animals not moved from an auction barn, suggests that animals moved from an auction barn need not have access to food and water in accordance with 9 C.F.R. Part 313.2(e).

RESPONSE: The Department does not agree that the rule suggests any limitation or removal of feed and water. This section speaks to animals who remain in an auction barn, transfer station or other similar location. Access to feed and water for horses is governed by N.J.A.C. 2:8-3.2 and 3.3(daily access) and by 9 C.F.R. Part 88 (access to food and water after unloading).

N.J.A.C. 2:8-3.6

COMMENT: Commenter agrees that sick or injured horses should be “promptly treated” but is concerned that the standard lacks guidance.

RESPONSE: The presenting signs and manifestations of diseases are extremely variable in nature. It is not possible or practical to have a specified time frame which would cover such variations. The Department expects that owners have a basic understanding of animal health and will be able to identify instances where an animal is sick or injured, and address that condition appropriately.

N.J.A.C. 2:8-3.6(a)

COMMENT: The regulations should explicitly require veterinary care for animals who are sick or injured within a stated period of time and that such care should return the animal to full health. In the event the animals do not recover should be taken out of the production cycle to recover or be humanely euthanized.

RESPONSE: The rule requires “sick or injured horse shall be promptly treated or humanely euthanized” (N.J.A.C. 2:8-3.6(a)) and “[p]roper medical care for the diagnosis or management of injury or disease must be provided to sick, injured, or non-ambulatory disabled horses.”(N.J.A.C. 2:8-3.6(c).) The presenting signs and manifestations of diseases are extremely variable in nature. It is not practical to have a specified time frame which would cover such variation. Moreover, the regulation, consistent with N.J.S.A. 45:15-8.1 permits owners to administer to the ills and injuries of their own animals (N.J.A.C. 2:8-3.6(c)1). While there are occasions when veterinary care will be necessary, the Department declines to identify specific circumstances under which such care is mandated due to the

broad spectrum of illnesses and injuries and varying capabilities of owners to treat such illnesses and injuries.

N.J.A.C. 2:8-3.6(a)1

COMMENT: The regulation should require immediate euthanasia of any horse when such horse is injured beyond recovery and suffering irreversibly. Methods used shall be in accordance with the most recent Report of the American Veterinary Medical Association's Panel on Euthanasia (2000). Electrocution or penetrating captive bolt should be prohibited.

RESPONSE: The AVMA has extensively researched euthanasia methods which are humane. They utilize documented scientific evidence as well as the knowledge of experts to compile the Report on Euthanasia. The AVMA report is used nationwide. The Department agrees that the methods used should be in accordance with the AVMA report on euthanasia and has adopted that report. When a horse is injured beyond recovery, it is expected that it will be promptly and humanely euthanized. Euthanasia includes slaughter. The Department notes that 9 C.F.R. Part 313 (Humane Slaughter of Domestic Livestock) permits captive bolt to be used in slaughter but does not permit electrocution of horses.

N.J.A.C. 2:8-3.6(b)

COMMENT: The rule that sick, injured and dead animals must be removed from contact with live animals within 24 hours is too permissive. The time frame should be reduced, for example, where a carcass poses a health risk to other animals.

RESPONSE: Depending upon the environment, some animals are checked once a day during feeding time. Moreover, owners may not know the precise time of death. The 24-hour time frame, which is the maximum timeframe, will ensure prompt removal. The Department notes further that owners will likely be aware of conditions of their animals and that they are required to ensure sick or injured animals are treated or humanely euthanized.

N.J.A.C. 2:8-3.6(c)

COMMENT: Proposed N.J.A.C. 2:8-3.6(c) states, “proper medical care for the diagnosis or management of injury or disease must be provided to sick, injured, or non-ambulatory disabled horses.” This statement is vague and inadequate. It does not appear to require debilitated animals to receive medical care for the sake of their welfare. Instead the animals are to receive medical care only for the diagnosis or management of injury or disease.” The words “[f]or the diagnosis or management of injury or disease” should be deleted.

RESPONSE: The Department does not know how one can improve a sick or injured animal’s welfare and health without a diagnosis of the injury or disease. The diagnosis will contribute to the proper management of the injury or illness which will address the animal’s welfare.

N.J.A.C. 2:8-3.6(d)

COMMENT: N.J.A.C. 2:8-3.6(d) is arbitrarily limited to horses for hire; the standards for hoof care (routine and proper) are too vague; and specific requirements for hoof trimming, deworming, inoculations, and exercise should be included.

RESPONSE: The Department disagrees that its specific requirements related to horses for hire is arbitrary. Horses used for that purpose may have particular stressors that do not exist for other horses. The requirements for horses for hire are appropriate. N.J.A.C. 2:8-3.6 requires that all sick or injured horses be promptly treated or humanely euthanized. In addition, proper medical care for the diagnosis or management of injury or disease (N.J.A.C. 2:8-3.6(c)) and proper hoof care (N.J.A.C. 2:8-3.6(e)) must be provided to all horses. This would include actions to prevent or limit disease. Given variations between species, breeds, age, environment, etc., it is not appropriate or practical to address all issues and notes that owners are responsible to ensure an environment that supports the health of the animal. Instead of a “one size fits all” approach, the Department determined that humane care is better addressed by a holistic approach.

N.J.A.C. 2:8-3.6(e)

COMMENT: Commenters suggest that the regulation be amended to read “Proper hoof care shall be provided to prevent lameness and thrush,” thereby advising of consequences if hoof care is not done.

RESPONSE: Proper hoof care varies with the type and use of the horse and the environment in which it is maintained. It may help prevent thrush, lameness or correct gait abnormalities. The suggested language is not necessary to establish the standard.

N.J.A.C. 2:8-3.6(f)

COMMENT: Commenters state that there are no guidelines to determine what practices are beneficial and necessary and the regulations do not require an evaluation of the humaneness of a practice; and the section should be deleted.

RESPONSE: The Department, after review of comments received, has determined that its definition of routine husbandry practices needs clarification. Simultaneously with this adoption, published elsewhere in this issue of the New Jersey Register, the Department will propose to amend the definition of “routine husbandry practices” to refer to techniques commonly taught by veterinary schools, land grant colleges, and agricultural extension agents for the benefit of animals, the livestock industry, animal handlers and the public health and are employed to raise, keep, care, treat, market and transport livestock. The benefits to the animal, the need for specific training (for example, a veterinarian) and humaneness of the practices are core components of the methods taught by those institutions. In the interim, the rule, which requires that knowledgeable individuals perform the procedures given the age, breed, physiologic condition, etc., in a way to minimize pain, is appropriate.

COMMENT: Many “routine” mutilation and marking practices are illegal when conducted on horses and other animals. For example, many states prohibit tail docking in horses. The practice is cruel, inhumane, and deprives animals of their ability to swat flies and communicate.

RESPONSE: The Department agrees with the American Association of Equine Practitioners, Ethical and Professional Guidelines that tail docking in horses should only be performed when it is a medical necessity or when vital to ensure

horse's safety in a work environment. The Department is proposing to amend the definition of routine husbandry practices and expects that, when a procedure is performed, it will be done by a knowledgeable individual in a way to minimize pain, as the procedures are taught by such colleges and extensions. When done consistent with the Department's rules, a practice will not be considered inhumane.

N.J.A.C. 2:8-3.7(a)(2)

COMMENT: Horses should be watered every 12 hours, and total transportation, holding, loading and unloading time without access to feed should not exceed 36 hours.

RESPONSE: As noted above, the Department has adopted the requirements of 9 C.F.R. Part 88, which permits horses to be transported for up to 28 hours, provided they had access to feed and water for the six-hour period prior to loading and are provided with water and feed and an opportunity to rest for a minimum of six hours after unloading. The rule is appropriate, provides for adequate hydration of horses prior to and after transport and after unloading. These requirements obviate the need to require that horses are provided water every 12 hours while in transit. The Department declines to adopt standards that are different than those required by the Federal government.

N.J.A.C. 2:8-3.7(a)2 and 3

COMMENT: The proposed standards would allow animals to be held in a pen or cage without food for 24 hours followed by 28 hours without either food or water.

All animals may be confined for 36 consecutive hours upon the request of the owner or person having custody of the animals. This is excessive.

RESPONSE: The rule adopts by reference regulations as outlined in 9 C.F.R. Part 88, the Commercial Transportation of Equines to Slaughter. The Department is applying these standards to all horses not just those transported to slaughter. The regulations require that horse receive feed and water for six hours prior to being transported. The horses then may be held off feed and water during transportation. Reference to the Twenty-Eight Hour Law was in error. The Department notes that 9 CFR Part 88 permits the 28-hour time frame so there is no change in permissible transportation times and that persons required to comply with these rules were made aware of appropriate feeding and watering requirements. The Department will not adopt N.J.A.C. 2:8-3.7(a)2 and 3.

COMMENT: Commenter believes the rule would permit animals to be transported for 28 hours without feed and water (and up to 36 hours under the Federal law) and then be held for an additional 24 hours without food. Commenter asserts this cycle could be repeated.

RESPONSE: The commenter's interpretation of the rule is mistaken. As noted above, the Commercial Transportation of Equine for Slaughter rule, 9 C.F.R. Part 88, requires horses to be unloaded after 28 hours and be given feed and water and at least six hours rest. To the extent that horses may be transported more than once, the same rules will apply, that is: access to feed and water for six hours prior to loading, unloading and after a maximum time of 28 hours, providing feed and water.

Poultry (Subchapter 4)

COMMENT: A professor of poultry sciences notes that the section dealing with poultry practices is correct and can be supported by the scientific literature which goes back for 100 years.

RESPONSE: The Department has endeavored to base its standards on scientific findings which were evaluated and confirmed to be valid after review by other scientists. The Department notes that although the study of animal husbandry and disease dates back at least one century, the literature regarding animal welfare of livestock is a newer, emerging science. The Department will continue to monitor results of both disciplines as new information is available.

COMMENT: Subchapter 4 should be divided into specific sections that address the welfare and physiological needs of each poultry species; it is essential that these standards acknowledge the different welfare threats to egg laying hens and unwanted male chicks of egg laying breeds as opposed to those of chickens and turkeys raised for meat.

RESPONSE: These rules apply to all poultry on farms in New Jersey and are sufficiently comprehensive to meet the welfare needs of all species regulated. N.J.A.C. 2:8-4.1(a)1 specifically requires that the age, breed, type, physiologic condition must be considered in determining whether the standards have been met.

COMMENT: The proposed regulations for poultry should also take into account the voluntary standards currently being implemented by industry entities such as the fast food chain restaurants.

RESPONSE: In formulating its standards, the Department reviewed over 400 sources including university publications, textbooks, scientific articles, government guidelines and industry standards. While some producers may choose to adopt voluntary standards for their own operations, the Department has determined that the standards of these regulations draw an appropriate base line for humane treatment of poultry.

COMMENT: The Department should acknowledge the welfare problems associated with fast growing chickens and turkeys and it should encourage the poultry industry to select genetic strains with fewer health and welfare problems.

RESPONSE: To protect the health of poultry, the Department supports the humane management of all poultry as evidenced in the proposed standards: poultry shall be provided daily access to sufficient and nutritious feed to allow for growth and maintenance of adequate body condition, as well as daily access to water in sufficient quality and quantity to satisfy physiologic needs of each bird. The Department does not believe it is appropriate to require certain genetic strains of poultry, but anticipated sound animal husbandry practices will result in selection of such birds.

N.J.A.C. 2:8-4.1(a)(1)

COMMENT: “To ensure that this provision adopts a ‘humane standard’ the phrase ‘physiologic condition’ should be changed to ‘physiologic need’, the phrase ‘requirements necessary for poultry’ should be replaced with ‘necessary for each poultry species’ and the phrase ‘that promotes the well being and humane treatment of each individual bird’ should be added to each provision.”

RESPONSE: The Department finds these recommended wording changes to be unnecessary as Subchapter 4 provides for the humane care and treatment of poultry. For instance, while the animal's physiologic condition must be considered to determine compliance, the Department has used "physiologic need," such as availability of water. (N.J.A.C. 2:84.3(a)1). The regulatory requirements that "each bird shall be assessed individually for purposes of determining compliance with the standards" for feeding and watering and "compliance with these standards shall not be determined by averaging the treatment or condition in a flock or group of birds," demonstrate that the Department has considered the well being and treatment of individual animals. Finally, because the Department has defined poultry to include various species, the change is not necessary here.

COMMENT: The proposed standards require that the health of each species be assessed individually. This is necessary and beneficial as long as the intent is to protect the animals and is not used to excuse unacceptable body condition scores or detrimental feeding and watering practices. Unfortunately, the proposed standards render this requirement meaningless by permitting body condition scores and feeding and watering practices wholly insufficient to ensure animal health.

RESPONSE: There is no body condition score for poultry. The Department disagrees that the rule's requirement for daily access to sufficient, nutritious feed to allow for growth and maintenance of an adequate body condition and the

requirement for daily access to water in sufficient quantity and quality to satisfy the bird's physiologic needs, are "wholly insufficient" to ensure animal health.

N.J.A.C. 2:8-4.2

COMMENT: Welfare problems associated with the bird's rapid growth rate are exacerbated by the use of growth promoting drugs in feed.

RESPONSE: The Food and Drug Administration (FDA) and United States Department of Agriculture (USDA) regulate the content of feed, including growth-promoting drugs. Producers may choose to select feeds without such drugs. The use of such feed does not constitute inhumane treatment of animals. Moreover, growth-promoting hormones are not used in poultry production. The Department noted that N.J.A.C. 2:8-4.2(a) requires that each bird be assessed individually for purposes of determining compliance with standards for feeding. N.J.A.C. 2:8-4.2(b) requires each bird to have access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition. To the extent rapid growth causes illness, N.J.A.C. 2:8-4.6 requires sick or injured poultry be promptly treated or humanely euthanized. These regulations provide sufficient guidance to address issues related to welfare of birds.

N.J.A.C. 2:8-4.2(b)

COMMENT: The proposed N.J.A.C. 2:8-4.2(b) states, "each bird must have daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition." The phrase "and to prevent hunger" should be added to the end of this sentence.

RESPONSE: The addition of this terminology will not enhance the humane treatment of poultry, as the standard requires daily access of sufficient and adequate nutrition to allow for growth and maintenance of an adequate body condition. The condition of hunger is not measurable and as such would create an unenforceable rule. Moreover, this rule is consistent with the EU Council Directive 98/58/EC which requires that animals be fed a wholesome diet which is appropriate to their age and species and which is fed to them in sufficient quantity to maintain them in good health and satisfy their nutritional needs.

COMMENT: The term “adequate” in reference to body condition is not defined and is therefore ambiguous until it is so defined.

RESPONSE: The standards for poultry in the proposed ruleS are intended for all species of poultry including chickens, roosters, capons, hens, pigeons, guinea fowl, turkeys, and waterfowl, whose body conditions will vary significantly. The wording of N.J.A.C. 2:8-4.2 (b) is sufficient and not ambiguous when considered with the remaining provisions for poultry in the ruleS. Under the general provisions (N.J.A.C. 2:8-4.1(1), all determinations as to whether the standards for poultry have been met shall take into account age, breed, type, physiologic condition, size, production level/stage of development of the animal, the daily maintenance requirements necessary for poultry and the environmental conditions. These will impact and inform the determination as to whether the animal is maintaining an adequate body condition.

N.J.A.C. 2:8-4.2(c)1

COMMENT: The term day-old poultry is misleading because by the time a hatch is completed, many of the birds have been out of their shells for several hours or more.

RESPONSE: The Department's rule and USPS regulations start the 72-hour time period at hatching. Therefore, no change is needed.

N.J.A.C. 2:8-4.2(c)(1)

COMMENT: The practice of mailing day-old chicks without food up to 72 hours is cruel and inhumane and should be prohibited. To ensure minimum welfare standards for newly hatched birds, food and water should be made available to each bird within four to six hours of hatching, transport of chicks should not exceed six hours and air transportation of newly hatched chicks should be prohibited.

RESPONSE: Withholding feed from day-old poultry while in transport for less than 72 hours is not inhumane and is supported by science. The Department has accepted and incorporated the Federal government's guideline for mailing day-old poultry. Newly hatched chicks have a yolk sac attached to their intestinal tract. This yolk sac may provide a source of nutrients from the time of hatch for up to five days. Therefore, the yolk sac could amply provide the chick with adequate nutrients during transportation. In addition, the rule mandates feed be provided immediately upon unloading.

To the extent such chicks are transported by means other than mailing, the rule (N.J.A.C. 2:8-4.5(d)) requires that they be transported with minimal delay, be provided with adequate ventilation, and be protected from elements to minimize

illness or mortality. Moreover, N.J.A.C. 2:8-4.5(e), (f), (g) and (h) provide additional guidelines.

COMMENT: The commenter recommends that newly hatched birds should have food and water withholding periods that are no greater than that allowed for adult birds.

RESPONSE: Pursuant to rules, birds, including newly hatched birds, will be given daily access to feed and water. An exception exists for transporting day-old chicks which, as noted above, have access to yolk sacs during the 72-hour period.

N.J.A.C. 2:8-4.2(c)2

COMMENT: The proposed rule allows birds to be transported in accordance with United States Postal regulations but fails to address whether such transport is “humane.” The Department must at least add language restricting that adult chickens be in transit no longer than 24 hours. Moreover, the regulations incorporated says merely that adult chickens “must be sent by Express Mail.” There is no time restriction on how long they may be transported without food.

RESPONSE: Given the variables associated with transportation (including weather, traffic, distance, etc.), the Department will not expressly limit travel times; however, N.J.A.C. 2:8-4.5(i) requires that birds shall not be transported more than 24 hours without access to feed and water. This requirement, along with the rule’s mandates regarding adequate ventilation, crate construction, an environment providing relief from hyperthermia or hypothermia detrimental to the bird’s health, is designed to ensure humane treatment of the animals during transport. Upon review of the regulation, the Department notes that it had

erroneously referred only to 9 CFR§ 111.5 subsection 3.1. The Department intended that postal regulations be applicable for all poultry and has clarified on adoption additional sections related to such mailing (3.3 and 3.4). The Department does not believe this is a substantive change requiring proposal, as producers are already required to comply with this Federal rule when mailing poultry.

COMMENT: U.S. Postal Service transports birds in vehicles which are not temperature controlled, subjecting the birds to fluctuating temperatures.

RESPONSE: The Department's rule acknowledges that poultry may be mailed consistent with postal regulations. The Department does not set those regulations. Comments about the appropriateness of the conditions are best directed to the Postal Service. As noted above, for other than mailing, the Department's rules are designed to provide appropriate transport. See N.J.A.C. 2:8-4.5 (b), (d), (e), (f) and (g).

N.J.A.C. 2:8-4.2(c)3

COMMENT: Chickens are not starved for 14 days or they would be dead. Feed might be taken away a few days under close supervision in order that the chicken can have a rest period of six weeks before she starts laying eggs again.

RESPONSE: The rule provides for specific restrictions regarding withdrawal of feed to allow chickens to return to egg-laying. If mortality exceeds 1.2 percent, the process must be stopped. The Department notes that few, if any, producers in

New Jersey use the maximum feed withdrawal time period and that research into alternative molting practices is ongoing.

COMMENT: The commenter states that as to egg laying hens, the standards are vague and inadequate and refers to United Egg Producers guidance and the Humane Farm Animal Care standards with regard to induced molting. It asserts the Department is codifying cruel and unnecessary practice that even the poultry industry is seeking to change.

RESPONSE: The Department disagrees that the standards are vague and inadequate as specific requirements for induced molting are found at N.J.A.C. 2:8-4.2(c)3 i and ii. The Department notes that few, if any, producers in New Jersey use the maximum feed withdrawal time period and that research into alternative molting practices is ongoing. The Department encourages producers to voluntarily employ best management practices for induced molting. The Department is available to assist producers in obtaining alternative or best management practices information.

COMMENT: Forced molting is designed to extend the economically useful life of laying hens in order to reduce the cost of a replacement program.

RESPONSE: The Department agrees that molting will extend the life of birds which would otherwise be slaughtered. Induced molting is utilized to return birds back to their pre-laying condition. The rule recognizes that induced molting is part of poultry agricultural production practices and sets baseline standards for humane treatment of laying hens.

COMMENT: Forced molting by any means should be prohibited but to ensure minimum welfare standards; if birds are forced molted, they must have water and nutritional food available at all times.

RESPONSE: The regulation requires water be available at all times. Feed withdrawal is a recognized method of achieving a molt. The Department declines to prohibit molting, as it is a recognized agricultural industry practice which is taught by veterinary schools, land grant colleges, and agricultural extension agents. At this time research into alternative molting practices is ongoing. The Department will review the research as it becomes available and will consider additional rulemaking. These standards in this rule are designed to ensure that the birds are monitored to avoid inhumane treatment.

COMMENT: Commenters state that the fast food industry has chosen not to purchase eggs from producers which permit forced molting.

RESPONSE: The Department is aware of decisions made by certain private entities to select producers based on practices employed. The Department has developed a regulation it believes establishes a minimum threshold for humane treatment. As noted above, as further research becomes available, the Department will revisit the regulation. In the interim, the Department encourages producers to choose best management practices, but declines to require them.

COMMENT: Commenters assert that forced molting causes animal suffering and should be prohibited.

RESPONSE: As noted above, the Department has set baseline standards which must be followed to avoid inhumane treatment of poultry. The Department

declines to prohibit induced molting as it is a recognized part of commercial agriculture in the United States. The Department is aware that scientists are actively investigating alternatives to complete feed withdrawal for inducing a molt. As results of that research become available, which is expected to alter the method and/or time frames related to feed provisions during a molt, the Department will review and, as appropriate, pursue additional rulemaking.

N.J.A.C. 2:8-4.2(c) 3

COMMENT: Commenters assert that research shows a scientific link between induced molting and an increase in shedding of *Salmonella enteritidis*.

RESPONSE: The *Salmonella* organism must be present in the environment to be introduced into the birds. Induced molting alone does not cause *Salmonella*. The industry has been striving to reduce the amount of salmonella in flocks and their surrounding environment as evidenced by the USDA, APHIS, National Animal Health Monitoring (NAHMS) Layers 99 survey which examined the *S. enteritidis* prevalence in flocks in the U.S. The organism was only found in environments of 7.1 percent of flocks nationwide and in 3.9 percent of flocks with numbers less than 100,000.

If the organism is present and results in disease, the rules require that sick or injured poultry must be promptly treated or removed within 24 hours and humanely euthanized. Existing N.J.A.C. 2:3-6.3 requires poultry imported to New Jersey flocks to meet the standards set forth in the U.S. Sanitation Monitored Program of the National Poultry Improvement Plan (NPIP), 9 CFR Chapter 1-Subchapter G, Part 145. These standards include testing, active rodent eradication,

biosecurity protocols as well as specific sanitation requirements and should reduce the risk of the occurrence of this disease in New Jersey flocks.

COMMENT: Forced molting through feed deprivation may alter or impair a bird's immune systems.

RESPONSE: While hens molted by feed withdrawal may show decreased immune responses, which may predispose a bird to diseases, the rule requires that the environment support poultry health and that birds which become ill be treated promptly or humanely euthanized. By following the National Poultry Improvement Plan (NPIP) guidelines, the risk of disease is reduced.

COMMENT: Studies have shown rodents to amplify Salmonella enteritidis infection in layer operations.

RESPONSE: The Department notes that NPIP requires active rodent eradication. The Department expects owners will take steps to reduce incidence of Salmonella enteritidis.

COMMENT: The spread of Salmonella enteritidis through flocks appears to be increased by hens consuming the contaminated feathers of adjacent birds (Holt, 1995:248)

RESPONSE: The Department has required that cages be constructed to minimize soiling of birds by fecal material from cages above (see N.J.A.C. 2:8-4.4(d)3), and further requires an environment that supports poultry health. Combined with NPIP guidelines, the risk asserted by the commenter will be reduced.

COMMENT: Viable alternatives to feed removal exist and we urge the Department to consider the alternatives and ban the utilization of feed removal to induce a molt.

RESPONSE: The Department agrees that alternatives exist, including reduced feed levels, and is monitoring research of such alternatives in commercial laying operations. The regulations set the maximum permitted period for removal of feed and limits for weight loss and flock mortality. The Department will consider additional studies and pursue additional rulemaking as appropriate.

COMMENT: Several states have deemed that the withholding of food from other animals to be inhumane and illegal.

RESPONSE: The Department is aware of no state that prohibits withdrawal of feed for the limited purpose of forced molting.

COMMENT: Forced molting is linked to aggression, frustration, and negative social interaction all of which are indicative of suffering.

RESPONSE: During an induced molt, birds may initially experience some stress while they continue feed seeking behavior but shortly after enter a more restful state. The Department notes that its standards reflect current science and that the Department will evaluate alternatives as they become available.

N.J.A.C. 2:8-4.2(c)3i

COMMENT: The United Egg Producers (UEP), an industry association, provides standards that are more humane than the Department of Agriculture. The UEP

states that withholding feed for four to five days is usually adequate for this purpose.

RESPONSE: The UEP standards reflect that four to five days feed withdrawal will normally cause a flock to cease egg production but notes that feed withdrawal of up to 14 days will yield superior results in subsequent production. As with the Department's rule, UEP urges extreme care to monitor weight loss and flock mortality during the molt. Moreover, the Department notes that the rule's weight loss limits will often result in feed withdrawal of seven days or less based on types of birds in New Jersey poultry houses.

COMMENT: The American Veterinary Medical Association (AVMA), whose position statement on forced molting does not promote humane treatment, condemns long-term food withdrawal.

RESPONSE: The AVMA's policy statement on induced molting recognizes that dietary restrictions that result in the cessation of egg production are acceptable. As with the Department's rule, the AVMA does not permit withdrawing water. The AVMA recommends intermittent feeding or diets of low nutrient density rather than feed withdrawal and encourages ongoing research into this area. The Department, as noted above, continues to monitor such research on molting practices, and will pursue additional rulemaking as necessary.

COMMENT: Depriving hens of feed for days for induced molting does not "maintain them in good health."

RESPONSE: The Department's rule requires molting be done within specific parameters; hens are provided with water throughout the molt, and feed is reintroduced when those parameters are met.

N.J.A.C. 2:8-4.2(c)3ii

COMMENT: Do you require the company to keep a log or record of the weight loss and mortality? How many birds are sampled?

RESPONSE: The regulation does not require log or other record to be created but the Department notes that industry practice is to keep such records.

COMMENT: Proposed regulations allow for up to 1.2 percent death losses.

RESPONSE: The Department has adopted Bell and United Egg Producers standards for outer limits of mortality rate for flocks during molting. The Department is aware of industry efforts to reduce that figure. As noted above, the Department will monitor those efforts, as well as research on this issue, and consider additional rulemaking as necessary.

N.J.A.C. 2:8-4.3(a)1

COMMENT: The terms "physiologic needs" and "maintenance requirements" are obscure and can be easily misinterpreted to the detriment of the animal's care. This provision should be revised to include specific language directing that poultry be provided with continuous access to a plentiful supply of clean water.

RESPONSE: The rule states that each animal shall be assessed individually and have daily access to water in sufficient quantity and quality to satisfy the physiologic needs as evidenced by the animal's hydration status. The Department

disagrees that the rule can be misinterpreted. Although there are not established medical criteria to determine hydration status in poultry, an examination of the animal's environment will yield some information regarding the sufficiency of watering. The Department will facilitate training on determining hydration status upon request.

COMMENT: Hydration status can be estimated in a number of ways, but the only one readily available to caretakers, animal control officers, or livestock investigators is physical examination, which requires knowledge, is partly subjective, and will not detect mild dehydration. For all species, standards should establish a minimum frequency of watering and amount per body weight. National Research Council guidelines can be used to establish appropriate minimums.

RESPONSE: The rules are both sufficient and practical and the suggested minimum watering frequency schedules are not necessary. The rule requires that poultry have daily access to water in a sufficient quality and quantity to satisfy the bird's physiologic needs. The rule requires age, breed, species, production level be considered. The rule is sufficient to provide guidance to producers and inspectors. Owners are free to use NRC guidelines to determine watering schedules.

N.J.A.C. 2:8-4.3(a)2

COMMENT: Remove N.J.A.C. 2:8-4.3(a)2.

RESPONSE: The Department disagrees that this paragraph, which requires sufficient water to be available during induced molting, should be deleted.

COMMENT: Supplying “sufficient” water during molting fails to recognize that this process often involves the withholding of both food and water and the “maintenance requirements” of a bird undergoing induced molting are very different from the natural water intake requirements of a bird and they may need no water at all. This section should be revised to require that birds always have continuous water available to them to ensure they do not become dehydrated.

RESPONSE: The rule, which requires that birds have access to water during molting to satisfy maintenance requirements, is adequate and addresses the commenter’s concerns.

COMMENT: The European Union Annex to Council Directive 98/58/EC Paragraph 16 provides that “all animals must have access to a suitable water supply or be able to satisfy their fluid intake needs by other means.” Clearly this provision will be breached where forced molting involves depriving hens of water.

RESPONSE: The rule does not permit withholding of water during molting; in fact, the rule requires sufficient water for maintenance requirements of each bird which may exceed the bird’s physiologic needs during the molting process.

N.J.A.C. 2:8-4.3(b)

COMMENT: Revise N.J.A.C. 2:8-4.3(b) to state, “There are no exceptions to watering requirements.”

RESPONSE: An exception is appropriate for newly hatched chicks as the egg sac provides adequate hydration. The Department has incorporated Federal regulations for mailing poultry into its regulations.

COMMENT: “Specific restrictions should be defined with respect to the transport time, restricting transit time to ensure welfare, with the birds to be allowed immediate access to a plentiful supply of clean water upon unloading.”

RESPONSE: The proposed rule does restrict the transit time for both day old chicks and other poultry. Day old chicks may be in transit no more than 72 hours from the time of hatch and must be provided with feed immediately following unloading. For other birds, N.J.A.C. 2:8-4.5(i) requires that birds may not be transported for more than 24 hours without access to feed and water.

2:8-4.4

COMMENT: Poultry have unique requirements within the context of the chicken's immediate environment and for this reason 99 percent of poultry producing eggs are kept in confinement. The standards established by the Department allow for differing production systems. This provides consumers a choice in their purchasing preferences.

RESPONSE: Producers may choose varying housing systems so long as they meet or exceed the standards set forth in the Department’s rules.

COMMENT: The standards developed by the NJDA allow for outdoor environments for domestic poultry. This provision appeals to the animal rights groups, but ectoparasites and disease pathogens are found in animal agriculture

environments that cause stresses to chickens. Coccidiosis, a disease usually occurring among chickens kept on litter, is eliminated in caged environments (Engstrom and Schaller, 1993). Today's modern production egg production systems call for housing chickens in cages to physically remove the chicken from stepping in their own manure and from coming into contact with these pathogens and ectoparasites. This reduces the stresses experienced by chickens and meets the goals of establishing appropriate housing, conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites.

RESPONSE: The Department acknowledges that parasites and other diseases may be more prevalent in outdoor environments. However, all producers must meet or exceed all requirements set forth in the Department's rule, which includes a requirement that "sick or injured poultry must be promptly treated or removed within 24 hours and humanely euthanized." (N.J.A.C. 2:8-4.6(a))

COMMENT: The draft regulations fail to adequately account for the negative consequences of keeping numerous birds together. They experience extreme auditory stimulus and are at risk for respiratory disease.

RESPONSE: The rules in their entirety provides an appropriate framework for keeping poultry. The Department notes that its requirement for adequate ventilation would assist in reduction of incidence of respiratory diseases. It is not merely the number of birds together that can produce negative consequences but rather the failure to maintain an adequate environment. If auditory stimulus becomes so extreme as to detrimental to poultry health, owners should take the steps necessary to ensure the environment supports the animals' health.

COMMENT: Issues such as overcrowding, lack of fresh air and sunlight should be considered in creating standards.

RESPONSE: The regulations set humane based standards by addressing shelters, both natural and constructed, cage housing, floor housing, adequate ventilation, and a requirement that the environment supports animal health.

COMMENT: Commenters suggest that the Department establish specific measurements for housing and limits on numbers of animals that share a cage.

RESPONSE: N.J.A.C. 2:8-4.4(d) requires the cage housing be of sufficient size to allow each bird to stand upright in the cage without have its head protrude through the top of the cage, lie down, get up, walk, spread its wings, move its head freely, turn around and rest. These determinations must take into account the breed, type, size and development of the animal. The Department notes that some studies have suggested that too much space may actually increase aggression in some species.

COMMENT: Rapid growth, in which high levels of painful leg disorders and heart failures are common, should be prohibited.

RESPONSE: The Department is aware that some genetic strains will exhibit rapid growth and that such growth may result in health issues. The Department regulation requires sick or injured birds to be promptly treated N.J.A.C. 2:8-4.6(c). The Department will not prohibit use of such genetic strains.

N.J.A.C. 2:8-4.4(a)

COMMENT: Remove the statement “detrimental to the animal’s health” after hyperthermia or hypothermia. Hyperthermia and hypothermia are always undesirable for both the animal’s health and welfare.

RESPONSE: The regulation requires relief from elements that would cause hypothermia or hyperthermia. By definition hypothermia is a body temperature below what is normal for that species and hyperthermia is a body temperature above what is normal for that species. (As noted, and for the reasons set forth above, the Department is proposing an amendment to the definition of hyperthermia elsewhere in this issue of the New Jersey Register.) There are circumstances which may result in temporary slight changes in body temperature but which are not detrimental to the animal’s health. The modifying phrase is necessary and appropriate.

COMMENT: The proposed standard requiring that each of the covered species be given “relief from the elements...that result in detrimental hyperthermia or hypothermia” is too vague. Guidance must be provided on the warning signs that might indicate the onset of these conditions.

RESPONSE: The Department believes that persons responsible for the care and keeping of animals as well as those charged with enforcing these standards should have general knowledge of animal behavior and species characteristics. The Department stands ready to facilitate training that will enable people to identify clinical parameters and environmental conditions that would indicate hypothermia and hyperthermia. The Department, given variables in species, age, breed, production level, and environments, declines to codify such guidelines.

COMMENT: Commenter recommends that to maintain minimum bird welfare standards, temperatures should be set between 20 degrees Fahrenheit and 75 degrees Fahrenheit in indoor housing.

RESPONSE: N.J.A.C. 2:8-4.4(a) and (b) specify that constructed shelters maintain air quality by natural or mechanical ventilation and minimize extremes in environmental temperature. Moreover, N.J.A.C. 2:8-4.4(g) requires that the environment support animal health. Given variables such as age of birds and weather, it would not be practical to establish firm parameters for temperature. The standards as written provide for bird welfare.

N.J.A.C. 2:8-4.4(b)

COMMENT: The regulations should require that birds be provided with shelter that keeps them dry, warm and out of the wind during inclement weather and protected from sun and excessive heat during hot weather.

RESPONSE: The regulations (N.J.A.C. 2:8-4.4(a)) require relief from the elements such as excessive wind, excessive temperature, and excessive precipitation that result in hyperthermia or hypothermia. Relief may be provided in natural or constructed environments.

N.J.A.C. 2:8-4.4(b)1

COMMENT: Chickens should have access to the outdoors or where they are kept indoors they need environmental enrichment such as straw bales and green cabbages to encourage exercise and sensory stimulation and to reduce hyper-aggressive behavior in male birds used for breeding.

RESPONSE: The regulations provide standards for outdoor and indoor areas, all of which must be an environment that supports animal health. The Department notes that, in some circumstances, permitting flocks of birds access to outdoors may result in an increase in transmission of illness, such as avian influenza. As to indoor housing for breeder birds, while the Department does not require additional items for exercise or stimulation, producers are free to use them. These items are not necessary to ensure the humane treatment of the birds. The Department expects that producers will monitor their flocks to control instances of hyper-aggressive behavior.

COMMENT: Solid wall housing should be prohibited. Solid wall houses and some of the curtained tunnel houses show an increase in dampness and diseases.

RESPONSE: The rule requires an environment that supports animal health and that constructed shelters maintain air quality, have a safe, interior surface, and be maintained at a level of repair to fulfill the requirements of N.J.A.C. 2:8-4.4(b). The Department declines to prohibit solid wall or curtained tunnel houses, as it believes its regulations will eliminate or ameliorate the conditions suggested by the commenter.

N.J.A.C. 2:8-4.4(c)1 and 2

COMMENT: The proposed standards are too vague regarding the nature of the “sharp objects or debris” to be “minimized” in an animal’s environment, stating only that they should pose an “actual threat” to animal health. The phrase “actual threat” should be better defined to preclude the possibility that animals would first

have to be injured before action is taken by caretakers, animal control officers, or livestock inspectors.

RESPONSE: The rule's requirement that sharp objects and debris that pose an actual threat to poultry health be minimized is not vague and is an appropriate description of the types of hazards that should be addressed. Actual threat does not mean an animal must first be injured. Rather, the term speaks to the likelihood that the animal will be injured given factors such as the size of the animal, the amount of space available, and the time spent in the environment.

N.J.A.C. 2:8-4.4(c)1

COMMENT: Rephrase to say, "Sharp objects that pose an actual threat to the birds shall be removed."

RESPONSE: This provision is to be considered in conjunction with other standards under "keeping" (N.J.A.C. 2:8-4.4) such as providing an environment that supports animal health. The proposed language of "minimized to prevent an unreasonable risk of injury to the birds" is needed because it is impossible to eliminate all possibilities of risk. For example, even standard equipment such as feed or water receptacles can be a source of injury under certain circumstances.

N.J.A.C. 2:8-4.4(c)2

COMMENT: Delete N.J.A.C. 2:8-4.4(c)2.

RESPONSE: The Department declines to delete this paragraph which requires that owners make reasonable efforts to minimize contact with stationary objects

that pose a risk of injury to the birds. The regulation is necessary for maintaining animal health.

N.J.A.C. 2:8-4.4(d)

COMMENT: Remove the word “not” in N.J.A.C. 2:8-4.4(d).

RESPONSE: This subsection does not apply to transport crates because N.J.A.C. 2:8-4.5(e) specifies the requirements for transport crates. As such, the Department declines to remove the word “not” in the phrase “not including transportation crates” in this subsection.

COMMENT: The Department is urged to mandate perches, bathing water and nesting boxes for the appropriate species. The comment refers to European law which will require (by 2007) all birds have access to adequate perches, nests and litter to allow pecking and scratching.

RESPONSE: The Department is aware that producers in Europe will provide housing equipment for their birds but does not believe that such equipment is necessary to ensure poultry is humanely treated. Producers are free to provide perches or nests if they so choose. Whatever is selected, it must support poultry health.

COMMENT: The regulation should require nesting boxes for birds in cage housing.

RESPONSE: The Department wrote its rules after consideration of poultry science curricula at veterinary schools, land grant colleges and agricultural extension agents, as well as United Egg Producer standards. The Department

declines to mandate nesting boxes for caged birds as current standards set a minimum standard for an environment that supports poultry health. The Department notes that its regulations for cage construction are designed to ensure the safety of the birds and to provide for their humane treatment. The Department notes that producers may provide nest boxes so long as the environment supports poultry health.

COMMENT: Commenter states in the battery cage, nest building is impossible. Hens have neither sufficient space to perform pre-laying movements nor any nesting material.

RESPONSE: As noted above, the Department does not believe nesting material is necessary for humane treatment of poultry. Additionally, the rule's requirement that the housing be of sufficient size to allow birds to lie down, get up, walk, spread its wings, move its head freely, turn around and rest provides adequate space for pre-laying movements.

COMMENT: The standards for housing need to include measurement specifications linking cage dimensions, number of birds per cage and size and weight of each bird to ensure that each bird can assume these basic postures, perform basic behaviors and reduce heat stress. The commenter listed specific size recommendations for laying hens.

RESPONSE: The regulations require space sufficient to allow poultry to stand, lie down, get up, walk, spread its wings, move head freely, turn around and rest. This must take into account age, breed, type, physiologic condition, production

level/stage of development and environmental conditions. Given those variables, the Department declines to set specific size recommendations.

COMMENT: Battery cages for hens have been shown to cause extreme frustration; are being phased out in Europe; and should be phased out in New Jersey in favor of more humane systems.

RESPONSE: As noted above, the regulatory scheme provides baseline standard for humane treatment of poultry. Producers are required to ensure that the environment supports poultry health. Producers are expected to monitor their flocks and control instances of extreme frustration, should they occur.

COMMENT: If there is inadequate space in the cage, especially minimal space to feed, some hens will get pushed back and not get enough to eat.

RESPONSE: The rule's space requirement, coupled with its direction that each bird must be assessed individually and have access to sufficient and nutritious feed to maintain an adequate body condition, will prevent the situation posed by the commenter.

COMMENT: Several commenters identified specific behaviors (for example, scratching, pecking, dust bathing, perching) that are impeded by keeping hens in cages. They asserted further that such keeping resulted in negative consequences for the birds (for example, frustration, weak/brittle bones).

RESPONSE: While some natural behaviors may be limited by cages, this type of environment may be appropriate, particularly in large flocks where, for example, outdoor access may increase potential for disease or where the inclination toward

a pecking order leads to cannibalism. The Department expects producers will monitor their flocks for the incidence of negative consequences. This, when coupled with complying with the standards set by the Department to prevent inhumane treatment, will provide protection for poultry. Moreover, as noted above, producers are free to provide additional equipment for their flocks as long as the standards of these rules are met or exceeded.

N.J.A.C. 2:8-4.4(d)1

COMMENT: In your requirement for cage layers, you make no mention of a bird being able to move without disturbing its cage mates.

RESPONSE: The commenter is correct. The space requirements are adequate for poultry health. Given the variables in housing in agricultural production, the Department declines to mandate what is perceived to be a nearly impossible scenario, that is, that a bird would move without disturbing or affecting others nearby.

COMMENT: Several commenters seek the elimination or phase out of battery cages which can hold between four and seven birds stating they limit movement and impede normal behavioral patterns and social needs.

RESPONSE: The Department repeats its earlier response that the rule's standards for caged housing provide a safe environment while meeting minimal standards for humane treatment.

COMMENT: A commenter believes the proposed regulations, which stipulate that chickens need room to turn around, stretch their wings, etc., would preclude the use of battery cages for egg-laying chickens.

RESPONSE: The Department disagrees that its space requirements will preclude the use of cages but notes that use of such cages must be consistent with these regulations.

N.J.A.C. 2:8-4.4(e)

COMMENT: “Meat-type” birds must also be given environmental stimulation that encourages them to exercise and that promotes activities other than sitting or eating in the dark or semi-dark and putting on weight.

RESPONSE: The regulations address indoor and outdoor environments that are designed to support poultry health. These standards provide a baseline for humane treatment. The Department will not mandate specific exercise programs or environmental stimulation but notes that producers may choose to provide this to further enhance animal health.

N.J.A.C. 2:8-4.4(e)2

COMMENT: Rephrase N.J.A.C. 2:8-4.4(e)2. Each laying hen should have access to her own individual nest box.

RESPONSE: The regulation requires a sufficient number of nesting boxes for hens seeking access to a nesting box in floor housing. As noted above, the Department declines to mandate nesting boxes for hens in cages.

N.J.A.C. 2:8-4.4(d)3

COMMENT: Add this requirement: “Housing which restricts birds to slatted, wire mesh or grid flooring is prohibited. Tiered cages are prohibited.”

RESPONSE: The regulation requires that constructed floor surfaces must provide an environment suitable for poultry health. Cage housing must be constructed to reduce risk of injury or entrapment and must minimize soiling of birds by fecal material from birds in cages above them. The environment as a whole must support poultry health. The regulation is adequate to ensure humane treatment of the birds.

N.J.A.C. 2:8-4.4(f)

COMMENT: Wire mesh floors contribute to foot and leg disorders when birds stand for lengthy periods of time.

RESPONSE: The rules have specific requirements for caged housing which specify that the cages be constructed so as to minimize the risk of injury or entrapment. The Department expects producers will monitor their flocks to check for incidence of disorders.

N.J.A.C. 2:8-4.4(g)

COMMENT: Levels of ammonia and other toxic gases parts per million (ppm) must be set for air quality in indoor systems. Commenter recommends that to maintain minimum standards, ammonia in poultry houses must not exceed 15 ppm at bird level.

RESPONSE: The regulation requires that air quality be maintained by natural or mechanical ventilation. Given seasonal and temperature variations, ammonia levels may be elevated slightly over optimal conditions. Producers are required to monitor and restore an appropriate level in order to ensure poultry health. The Department will monitor this issue and if necessary pursue additional rulemaking.

COMMENT: Provisions need to be added for preventing and responding quickly to power outages.

RESPONSE: The Department is requiring that all life supporting mechanical equipment shall be inspected at least once daily and maintained in functioning order. Although power outages may be beyond the control of individual producers, the Department requires an environment that supports poultry health and expects producers to have emergency plans that would be employed to the best of their ability when needed.

COMMENT: In the UK alone, around 500,000 battery hens a year die from brittle bones; the bone fragility can lead to a type of paralysis which can result in hens dying from starvation at the back of the cage simply because they cannot reach the food and water points.

RESPONSE: The rule requires that sick or injured poultry must be promptly treated or removed and must have daily access to sufficient and nutritious feed and water maintain adequate body condition. The Department expects that producers will monitor their flocks and avoid the situation described by the commenter.

COMMENT: Poultry and fowl also require visual stimulation in the first few days of life.

RESPONSE: Providing an environment consistent with poultry health will include stimulation of chicks or poults; visual stimulation may include lighting in a hatchery.

N.J.A.C. 2:8-4.4(h)

COMMENT: Add this requirement “Regardless of housing type, each bird shall have room enough to stand, lie down, get up, walk, spread her wings, move her head, turn around, rest and materials to build nests and perch without touching another bird or the housing structure.”

RESPONSE: The minimum space requirements established by this rule (“adequate space for each bird ... to stand, lie down, get up, walk, spread its wings, move its head freely, turn around and rest”) essentially meet the commenter’s concerns regarding space. As discussed in response to comments below, the Department has required nesting boxes for floor housing units. The Department declines to mandate materials to build nests and perches for caged birds as current standards set a minimum standard for an environment that supports poultry health. The Department notes that in any housing system, it would be nearly impossible for birds not to touch each other or the housing structure.

N.J.A.C. 2:8-4.5

COMMENT: The section on marketing and sale addressed the commercial transportation of poultry but fails to provide language that expressively defines a standard by which a transporting company is held accountable.

RESPONSE: The rule provides that the drivers and/or any person present in the vehicle for purposes of transporting poultry is responsible for the birds at all times during transportation. The rule further provides for responsibility during loading and unloading poultry; that the birds be transported with minimal delay; that they be provided with adequate ventilation; and be protected from the elements in order to minimize illness or mortality. This rule provides an appropriate standard for transporters.

N.J.A.C. 2:8-4.5(a)

COMMENT: This provision should mandate appropriate humane training for all transporters in accordance with proposed section N.J.A.C. 2:8-8-8.1(b)1i.

RESPONSE: The rule's requirements apply to transportation of animals and transporters are responsible to meet those requirements. The Department expects that transporters have basic knowledge regarding animals. If training is necessary, the Department will facilitate such training but the Department will not require it.

COMMENT: The provision should make clear that the owner of the animals is also responsible for the welfare of the animals at all times, including transport.

RESPONSE: The rule states that the driver of the transport vehicle and/or the person who is present in the vehicle for purposes of transporting the cattle shall be responsible for the welfare of the animals at all times during transport. This is consistent with European Union, Canada and other countries. Owners are expected to select transporters who have appropriate knowledge of animal welfare and who will comply with the Department's regulations. Because owners have an interest in the well being of their animals during transport, they will take

appropriate steps for the animals' welfare. The Department does not believe the suggested change is necessary.

N.J.A.C. 2:8-4.5(b)

COMMENT: Commenters assert that proposed N.J.A.C. 2:8-4.5(b), which requires the handling and transporting of poultry in a manner that "minimizes injury, illness and death," is too vague. There is nothing that allows producers or enforcement officials to ascertain what levels of injury, illness and death are minimal and therefore acceptable. N.J.A.C. 2:8-4.5(b) also lacks standards for applying terms such as minimal delay and adequate ventilation.

RESPONSE: The rule specifically requires that handling and transporting be undertaken to minimize adverse affects on animals. Transporters or owners are expected to have basic knowledge of animal behavior and should identify conditions that are hazardous to animal health. The Department will facilitate training as necessary. Itemizing events or conditions that would minimize adverse events is a nearly impossible task given the various situations that arise during transport. The rule's use of the term minimize, whose commonly understood meaning is "to reduce or keep to a minimum," (Webster's New Encyclopedic Dictionary, Merriam-Webster, Inc., 2002) advises both owners and enforcement officials of the obligations imposed by the rules.

N.J.A.C. 2:8-4.5(b)3

COMMENT: Commenters suggest that training regarding the catching of birds is required for handlers and transporters.

RESPONSE: The Department expects that persons who own, handle or transport poultry do or should have a basic understanding of animal behavior and the techniques to be employed to minimize injury. To the extent the need for training exists, the Department will facilitate such instruction.

N.J.A.C. 2:8-4.5(c)

COMMENT: The practice of mailing any bird, adult or newborn for up to 72 hours without food or water is inhumane and should not be permitted. In addition, this section lacks any specific time mandate pertaining to loading, movement and unloading.

RESPONSE: As noted above, the Department has adopted the Federal postal guidelines as to mailing poultry. The 72-hour time frame which commences upon hatching takes into account the availability of the egg sac to a newly hatched chick for sustenance. N.J.A.C. 2:8-4.5(i) requires that birds not be transported more than 24 hours without access to feed and water. The rule further requires that once delivered to their destination, birds may not be kept in transport crates longer than 18 hours, and that they are transported with minimal delay. These provisions, when coupled with the remainder of the rule, provide guidance and specific time frames are not necessary.

COMMENT: N.J.A.C. 2:8-4.5(c) should require that birds are protected from the weather as well as exposure to undue fluctuations in temperature, humidity or air pressure; unnecessary exposure to noise or vibration, and should be provided food and water. The provision should also ensure that birds are carried properly and not overcrowded and transported to the destination as soon as possible and delays

minimized. All necessary steps should be taken to prevent them from escaping or falling from the vehicle.

RESPONSE: N.J.A.C. 2:8-4.5(c) references Federal regulations and the New Jersey Department of Agriculture is without authority to modify those regulations. The commenter should direct its comments to the United State Postal Service. When transporting by other than mailing, N.J.A.C. 2:8-4.5(d) and (e) apply. Those provisions address commenter's concerns.

COMMENT: Commenter questions whether poultry can be mailed.

RESPONSE: Consistent with 39 C.F.R. 111.5, poultry may be sent through United States mail.

N.J.A.C. 2:8-4.5(d)1

COMMENT: The language in proposed N.J.A.C. 2:8-4.5(d) stating that birds, "transporting by any method other than mailing shall be ... transported with minimal delay," implies that birds transported by mailing do not need to be transported with minimal delay.

RESPONSE: Postal regulations require that adult fowl and adult chickens must be sent by Express Mail. 39 C.F.R. 111.5 C 022, 3.3 and 3.4. Express Mail will result in transportation with minimal delay.

COMMENT: The proposed standards require that all animals be transported "with minimal delay." This phrase should be defined and, in particular, distinguished from transport with adequate rest stops for rest and watering. As currently written,

this proposed rule could be interpreted to the animals' detriment and thus to minimize the number of stops during transport.

RESPONSE: The term "minimal delay" does not require additional clarification. The Department disagrees with the commenter's assertion that the rule's requirement would engender transportation without stops or with fewer stops. Even were such a construction employed by a transporter, N.J.A.C. 2:8-4.5(i) requires that birds not be transported for more than 24 hours without access to feed and water.

N.J.A.C. 2:8-4.5(d)2

COMMENT: The phrase "adequate ventilation"- an additional requirement for animals during transport - should be clarified, as should the meaning of the requirement that "consideration shall be given to minimize exposure of poultry...to excessive solar radiation and excessive precipitation."

Response : During transport, loading and unloading, poultry must be handled in a manner that minimize injury, illness, and death (N.J.A.C. 2:8-4.5(b)), which includes adequate ventilation and protection from the elements (N.J.A.C. 2:8-4.5(d)1 and 2). Persons transporting poultry should be familiar with animal behavior and environments to assure that birds do not suffer ill effects based on lack of air or excessive exposure to the elements. To the extent training in animal science is necessary, the Department will facilitate such training.

N.J.A.C. 2:8-4.5(e) through (j)

COMMENT: N.J.A.C. 2:8-4.5(e) through (j) should require that birds are protected from the weather as well as exposure to undue fluctuations in temperature, humidity or air pressure; unnecessary exposure to noise or vibration; and should be provided food and water. The provision should also ensure that birds are carried properly and not overcrowded and transported to the destination as soon as possible and delays minimized. All necessary steps should be taken to prevent them from escaping or falling from the vehicle.

RESPONSE: The regulations address the commenter's concerns: subsections (f) and (g), relief from elements; subsection (i), food and water; subsection (d), minimal delay; and paragraph (e)2, crate design. While the regulation does not specifically address noise and vibration, the Department notes that transportation must be done in a way to minimize injury, illness and death.

N.J.A.C. 2:8-4.5(f)

COMMENT: Issues such as minimum size of the crate's door opening and minimal height and size of a transport crate must be specified in these proposed regulations.

RESPONSE: N.J.A.C. 2:8-4.7(b) requires doors to be large enough to permit passage without injury to the bird. As the regulation states that the age, breed, type, size, etc., must be taken into account, and given the variety of birds and types of transportation crates covered by this rule, the Department declines to state specific sizes for crates.

COMMENT: A commenter recommends the adoption of the following from the Australian Code 16.8 "Contingency plans should be in place to minimize any

delay that could be stressful to birds as a result of transport breakdowns and to minimize any distress to the birds.”

RESPONSE: The Department notes that its rules require that poultry be transported in a way to assure humane treatment. Even in the event of a transport breakdown, those having control over the animals are expected to take steps to minimize injury or death. The Department declines to mandate transporters have contingency plans although it expects that from a business and animal welfare perspective, such contingency plans are routine.

COMMENT: Delete: “that result in hyperthermia or hypothermia detrimental to the birds’ health.”

RESPONSE: By definition, hyperthermia and hypothermia are body conditions below or above, respectively, a body temperature that is normal for that species. (As noted, and for the reasons set forth above, the Department is proposing an amendment to the definition of hyperthermia elsewhere in this issue of the New Jersey Register.) Slight changes may not be detrimental to an animal’s health. Where such change is detrimental, failure to provide relief would violate the rule.

N.J.A.C. 2:8-4.5(g)

COMMENT: The rule should set limits on the amount of time animals of all kinds (not just poultry) may be exposed to specific temperatures, both high and low, as well as the length of time animals may be exposed to rain, snow and other kinds of precipitation.

RESPONSE: The rule, with reference to shelter and relief from the elements, as well as its recognition of variation based on age, breed, type, physiologic condition, etc., provides sufficient guidance to reduce adverse consequences and, therefore, the Department declines to promulgate specific time frames.

COMMENT: The proposed rule is too vague, and guidance must be provided on the warning signs (for example, hazardous body temperatures) that might indicate the onset of the conditions “hypothermia” or “hyperthermia.”

RESPONSE: The Department expects handlers to have general knowledge of animal behavior and species characteristics including signs of hypothermia and hyperthermia. The Department stands ready to facilitate training that will enable people to identify animal behaviors and environmental conditions that would indicate hypothermia and hyperthermia.

N.J.A.C. 2:8-4.5(g)

COMMENT: N.J.A.C. 2:8-4.5(g) to read: “During transport poultry should not be exposed to excessive solar radiation and excessive precipitation.”

RESPONSE: The regulatory scheme requires that birds be protected from the elements in order to minimize illness or mortality (N.J.A.C. 2:8-4.5(d)3). N.J.A.C. 2:8-4.5(g) must be read in conjunction with the entire scheme, and, as such, requires that issues of exposure to excessive solar radiation and excessive precipitation be considered. Given variables in transportation, a complete prohibition on exposure would be virtually impossible.

N.J.A.C. 2:8-4.5(i)

COMMENT: Commenter recommends the adoption of the following from the Australian Code 16.7: “Birds should not be held in crates or containers for longer than 24 hours unless they are assured of access to food and water. It is recommended when a delay is anticipated and holding time is likely to significantly exceed 24 hours that suitable arrangements be made, e.g., the birds be released into a shed where they have access to feed and water or immediate slaughter arranged at another slaughterhouse, as may be appropriate.”

RESPONSE: The regulation requires that birds not be transported for more than 24 hours without access to feed and water and they not be kept in transportation crates for longer than 18 hours after they are delivered to their destination. The Department notes that birds will generally be off loaded for feed and water.

N.J.A.C. 2:8-4.5(j)

COMMENT: Delete “Once delivered to the destination.”

RESPONSE: Deletion of the phrase as suggested by the commenter would result in a requirement that birds be released not less than every 18 hours. The Department declines to accept this recommendation. The rule requires access to feed and water at least every 24 hours. Release of birds after 18 hours during transit may result in injury or additional stress to the animals as they were recaptured for their continuing journey.

N.J.A.C. 2:8-4.6

COMMENT: Proposed N.J.A.C. 2:8-4.6(a) states “sick or injured poultry shall be promptly treated or humanely euthanized.” The commenter agrees in principle but is concerned about the divergent interpretations of “promptly treated.”

RESPONSE: The presenting signs and manifestations of diseases are extremely variable in nature. It is not practical to have a specified time frame which would cover such variation. The Department expects that owners will have basic knowledge of animal behaviors and will act expeditiously to preserve the health of the flock.

COMMENT: The regulations should explicitly require veterinary care for animals who are sick or injured and care should return the animals to full health.

RESPONSE: The rule states: “Sick or injured poultry must be promptly treated or removed within 24 hours and humanely euthanized,” (N.J.A.C. 2:8-4.6(a)), and “proper medical care for the diagnosis or management of injury or disease must be provided to sick or injured poultry.” N.J.A.C. 2:8-4.6(c) The regulation, consistent with N.J.S.A. 45:15-8.1, permits owners to administer to the ill and injuries of their own animals. N.J.A.C. 2:8-4.6(c) 1. While there are occasions when veterinary care will be necessary, the Department declines to identify specific circumstances under which such care is mandated due to the broad spectrum of illnesses and injuries and varying capabilities of owners to treat such illnesses or injuries.

COMMENT: The standards fail to realize that the owner may be the cause of the animal’s injury or disability through neglect. The European Union and several

states have determined that failing to provide veterinary care to an animal is cruel and inhumane.

RESPONSE: The proposed rule requires that sick or injured poultry be promptly treated or otherwise humanely euthanized. This is consistent with the European Union standard. If the owner is the cause of the injury or disability and fails to provide treatment or does not humanely euthanize the poultry, he or she may be found to have violated the regulation. The Department further notes that intentional cruel or inhumane acts or actions that place an animal's life in imminent peril due to neglect or substandard practices would be considered a "severe violation."

N.J.A.C. 2:8-4.6(a)

COMMENT: Layers commonly suffer from diseases like "fatty liver syndrome" and "cage layer fatigue" from calcium deficiency. Inadequate calcium results in broken bones, paralysis and even death.

RESPONSE: The rule's requirement for daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition addresses the commenter's concerns.

COMMENT: In N.J.A.C. 2:8-4.6(a), delete "removed within 24 hours."

RESPONSE: The Department notes that the 24-hour time frame is the outside time frame for removal. It reflects that the flock should be checked at least once on a daily basis and will work to ensure that health risks to the flocks are minimized.

N.J.A.C. 2:8-4.6(a)1

COMMENT: The AVMA's 2000 Report on Euthanasia provides that carbon dioxide is the only chemical currently used that does not result in tissue residues. According to the Farm Animal Health and Well-being report, in the United Kingdom, the use of argon gas in combination with residual oxygen or carbon dioxide is approved. Argon appears to be the most humane. The report states that argon gas requires special equipment that is not available.

RESPONSE: The Department will not require the use of argon gas without alternatives, particularly where the specialized equipment is not available to producers. The use of carbon dioxide has been deemed a humane method of euthanasia by the AVMA. The Department will monitor the propriety and availability of alternative methods of euthanasia and, as necessary, will consider additional rulemaking.

N.J.A.C. 2:8-4.6(a)2

COMMENT: The killing and disposal of unwanted male chicks of egg laying strains presents a significant welfare challenge and the Department fails to address this concern.

RESPONSE: The Department has adopted the AVMA position on disposal of unwanted chicks, poults and pipped eggs, as amended and supplemented. The rule requires humane euthanasia techniques regardless of the type, class or species of poultry. (N.J.A.C. 2:8-4.6(a)1 and 2.)

COMMENT: The AVMA appreciates the Department's support of its position on disposal of unwanted chicks, poults, and pipped eggs.

RESPONSE: The Department thanks the American Veterinary Medical Association (AVMA) for its comment.

N.J.A.C. 2:8-4.6(a)4

COMMENT: The term "knowledgeable individual" is not defined and is therefore meaningless.

RESPONSE: The Department disagrees the term is meaningless. Knowledgeable, in its commonly understood meaning, refers to a person possessing the information and skills necessary to complete a task.

N.J.A.C. 2:8-4.6(a)5

COMMENT: Include the following provision: "Unwanted male chicks should be humanely euthanized. Use of shredders and the throwing of chicks into trashcans where they are piled on top of each other and suffocated are strictly prohibited."

RESPONSE: The regulation requires that the chicks be humanely euthanized and that they must be euthanized prior to disposal.

N.J.A.C. 2:8-4.6(b)

COMMENT: The rule applied to each species that sick, injured and dead animals must be removed from contact with live animals within 24 hours to too permissive. The time frame should be reduced, for example, where a carcass poses a health risk to other animals.

RESPONSE: The Department notes that the 24-hour time frame is the outside time frame for removal. It reflects a requirement that the flocks should be checked at least once on a daily basis and will work to ensure that health risks to the flocks are minimized. The Department notes that owners will likely be aware of the condition of their birds and that they are required to ensure that sick or injured birds be treated or humanely euthanized.

N.J.A.C. 2:8-4.6(d)

COMMENT: Birds should be inspected daily and producers keep records of these inspections.

RESPONSE: The regulatory scheme, which requires daily access to feed and water, assuring adequate environmental conditions and removal of sick or dead poultry within 24 hours, requires daily inspection of the flock. The Department does not believe recordkeeping should be mandated at this time. Records will not necessarily add to information relevant to a determination regarding compliance with these regulations. The Department will monitor this situation and, if appropriate, pursue additional rulemaking.

COMMENT: The section requiring sick birds to be removed prior to molting should be deleted because induced molting should be prohibited.

RESPONSE: The Department's rule permits induced molting and as such its rule requiring sick birds to be removed from the flock prior to molting is appropriate.

N.J.A.C. 2:8-4.7

COMMENT: The rule requires that birds shall be caught and carried and removed in a manner that minimizes injury to the bird. The language is too vague.

RESPONSE: The Department attributes baseline knowledge to owners and transporters of poultry and declines to list particular methods of catching and carrying given the variations in species and strains of birds so regulated. The Department does not agree that the language is vague and notes that words in the regulation are given their commonly understood meaning.

COMMENT: The Department fails to recognize welfare concerns associated with the handling of birds especially spent laying hens.

RESPONSE: The Department disagrees that the proposed rule fails to recognize the welfare concerns regarding the handling of any poultry. N.J.A.C. 2:8-4.7 (a) through (d) require birds shall be caught, carried and removed in a manner that minimizes injury to the bird; all doors and openings through which birds are moved shall be large enough to provide passage of birds without injury to the bird; catching and handling protocols shall minimize the number of times a bird is handled between capture and re-housing or slaughter; and the time between capture and slaughter shall be minimized to the extent possible consistent with food safety considerations. These requirements establish appropriate handling standards. Moreover, the Department expects that owners and transporters will have general knowledge of animal behaviors. Together, they address welfare concerns.

COMMENT: All doors of cages, crates, drawers, etc., should be wide enough to avoid injuring the birds. Specific door and compartment measurements to fit birds of standard weights should be established and required.

RESPONSE: Given differences in species, breeds, type, age, production level, there are too many variables to set specific door and compartment measures. The regulation requires the doors be large enough to prevent injury to the bird. The Department believes its regulation is appropriate.

N.J.A.C. 2:8-4.7(a)

COMMENT: Birds should be caught and held by both legs to reduce injuries and pain. Care must be taken to prevent the chickens from getting kicked or stepped on. In addition, corral gates should not be used nor should chickens be lifted up on loaders.

RESPONSE: The regulation requires that birds shall be caught, carried and removed in a manner that minimized injury to the bird. The Department declines to identify specific conduct that may result in injury given variables in the species, age, and physiologic condition of birds. The Department notes deliberate infliction of injury would be a severe violation.

COMMENT: The United Egg Producers (UEP) guidelines address the need to handle spent laying hens and include specific handling suggestions.

RESPONSE: The UEP guidelines are specific for laying hens. The standards in the proposed rule cover all species of poultry from Silkie Bantam to ostriches. Standards were written to account for the wide variation in type of birds. Each

situation can then be evaluated taking into consideration the species and their specific requirements. The Department encourages United Egg Producers guidelines to be used when spent hens are being handled but will not require them at this time.

N.J.A.C. 2:8-4.7(c)

COMMENT: Workers must be properly trained, and if machines are used, they should be well designed. Transport trucks should be “environmentally controlled.”

RESPONSE: The Department has established the manner in which birds shall be caught, carried and removed, that is, it shall be done in a manner to minimize injury to the bird. Whether done by hand or machine, the end result must be the same: personnel must be properly trained to ensure the birds’ welfare. The rule also reflects standards for transport, which require protection from the elements to minimize illness and mortality.

COMMENT: Birds should be moved straight to humane gas-stunning units at a processing plant.

RESPONSE: As noted above, rules provide guidelines for transport. Procedures related to slaughter of poultry are beyond the scope of the rules.

N.J.A.C. 2:8-4.7(d)

COMMENT: The proposed rule states: “The time between capture and slaughter shall be minimized to the extent possible consistent with food safety

considerations.” This ignores the humane considerations and cites only food safety.

RESPONSE: This rule was proposed to ensure that, once delivered to their destination, birds are processed without unnecessary delay. The Department recognizes that withdrawal of feed and water is critical for sanitary processing procedures and food safety. To the extent that a bird has been fed and watered a short time prior to its arrival at the slaughter facility, it may be appropriate to delay slaughter to avoid fecal contamination. The Department disagrees that this rule ignores humane considerations as the bird will have been fed and transported pursuant to the rules.

COMMENT: Replace “minimized to the extent possible consistent with food safety considerations” with “minimal.”

RESPONSE: The Department believes that minimized is more appropriate in this context and that the suggested change would not add to or clarify the rule.

N.J.A.C. 2:8-4.7(e)

COMMENT: Several commenters assert that beak trimming should be prohibited as it results in acute and chronic pain and is unnecessary in a well-managed flock; the living environment should require other measures that would enhance natural behaviors and minimize aggressive behaviors.

RESPONSE: Beak trimming is a routine animal husbandry practice where the tip of the beak is shortened in order to reduce pecking, feather pulling, and cannibalism in the flock. It does not result in the inability of a bird to eat or drink.

While there are advantages and disadvantages associated with the practice, on balance, the advantages outweigh the disadvantages. When done as required by the rule, by a knowledgeable person in a manner to minimize pain, the Department does not consider it to be an inhumane practice. The Department notes that poultry science departments in agricultural schools teach this practice as part of flock husbandry.

COMMENT: Nasal implants in broiler breeder males should be prohibited.

RESPONSE: Nasal implants are designed to restrict male birds from eating the feed made available to females in the flock. In the absence of the device, female birds, who are necessarily housed with male breeder birds, would be prevented from accessing feed. When done by a knowledgeable individual in a way to minimize pain, the Department will not prohibit this practice.

COMMENT: Several commenters request that toe trimming be prohibited and the regulation deleted.

RESPONSE: Toe trimming is a practice employed to prevent injury to other birds in the flock (for example, turkeys will climb onto other birds). Such behavior is not necessarily remediated by the availability of space. Appropriate flock management may include the need for this routine husbandry practice which is taught in poultry science departments at agricultural colleges. The Department declines to prohibit this practice and believes its rules related to time in which the procedure may be performed is appropriate.

COMMENT: Many routine agricultural practices involving chickens and other birds have been determined by veterinary and/or agricultural expertise as well as

by common sense to be cruel and inhumane or are illegal when conducted on other animals. For the proposed standards to have meaning, these practices must be prioritized, identified, regulated and in some cases prohibited and or/replaced.

RESPONSE: The regulations represent appropriate standards for humane treatment of poultry. To the extent the Department has determined practices are inhumane or not supported by science, it has limited those practices. The rules allow for certain specific practices which are commonly taught by veterinary schools, land grant colleges and agricultural extension agents, for the benefit of animals, the livestock industry, animal handlers and the public health and are employed to raise, keep, care, treat, market and transport livestock. The methodology of performing these husbandry practices is to be such as to avoid or minimize pain. The New Jersey Board of Veterinary Medical Examiners, by regulation, explicitly permits poultry husbandry practices by members of the poultry industry if they do not represent themselves as veterinarians. N.J.A.C. 13:44-4.3

N.J.A.C. 2:8-4.7(e)1 and 2

COMMENT: Commenters ask proposed section N.J.A.C. 2:8-4.7(e)1 and 2 pertaining to beak trimming be deleted. If this and other provisions are to remain in the regulations, the time periods should be shortened to comport with European Union standards.

RESPONSE: The Department wrote its rules after consideration of poultry science curricula at veterinary schools, land grant colleges and agricultural extension agents, as well as United Egg Producer standards. As noted in

responses below, beak trimming provides benefits to the flock (for example, reduction in feather pulling, cannibalism, pecking). In the European Union beak trimming of chickens is to take place when chickens are less than 10 days old. The Department notes that in this State, the procedure is generally performed on chickens within 10 days of hatching. The rule reflects the possibility of regrowth and the need to trim again when necessary. The Department believes the time frames used in the rule, which are supported by science to ensure poultry health, provide for humane treatment of poultry.

COMMENT: There is no reason or scientific evidence to support different requirements for different bird species in regard to beak trimming.

RESPONSE: There are basic physiologic differences between species including time for maturation of the beak. The Department disagrees that there are no reasons to differentiate bird species.

COMMENT: If a routine procedure does not require the services of a veterinarian, the standards should make clear what can be done and at what ages.

RESPONSE: The rules related to beak trimming and toe trimming provide specific time frames in which the procedures may be performed. Other routine husbandry practices should be performed consistent with the rules and as taught by veterinary schools, land grant colleges, and agricultural extension agents.

N.J.A.C. 2:8-4.8

COMMENT: The section provides no mechanism for the Department or any other authority to be involved in determining whether the standards for an exception

have been met. One provision refers to a veterinarian “who can provide a medically supportable written explanation” but does not state that the veterinarian must provide such an explanation. This section should require the approval of the Department for such an exception. At a minimum, the rules should require the submittal of an incident report to the Department for each exception prior to the action that violates the rules, or within 24 hours after the action if an emergency prevents prior notice to the Department.

RESPONSE: The Department has identified direct veterinary care for poultry as permitting an exception to the standards of the subchapter. This exception recognizes the education and expertise of trained veterinary medical doctors who are tending to the animal. Where necessary, a veterinarian may be requested to provide a written explanation but the Department does not require such writing in every instance. The Department notes that veterinarians are licensed by the State Board of Veterinary Medical Examiners and must comply with the ethics, standards and laws set forth in N.J.S.A. 45:16-1 et seq. and N.J.A.C. 13:44. The Department believes it is appropriate where an animal is under the care of a professional to defer to the veterinarian’s professional judgment. The Department will not require every exception to be reported but notes that N.J.A.C. 2:8-8 deals with reports of complaints to the Department.

COMMENT: Remove N.J.A.C. 2:8-4.8, as there should be no general exceptions to the humane care of animals.

RESPONSE: The Department believes that animals under the direct care of a veterinarian may appropriately be exempted from the standards. The Department

further notes that the exception listed in N.J.A.C. 2:8-4.8(a)3 is in error and, as 9 C.F.R. Part 313.2 does not apply to poultry, the Department is not adopting that paragraph. The Twenty-Eight Hour Law, 49 U.S.C. § 80502, applies to transportation of animals as permitted by Federal law. To the extent that the Twenty-Eight Hour Law applies to poultry, the Department will permit animals to be transported consistent with that law.

N.J.A.C. 2:8-4.8(a)2

COMMENT: Maximum food and water withholding should be 24 hours; the Department should not rely on 49 U.S.C. § 80502 or 9 C.F.R. 313.2.

RESPONSE: As noted above, the Department has determined that 24 hours (with the exception of newly hatched chicks as provided for in N.J.A.C. 2:8-4.2(c)1) is an appropriate, maximum time frame for poultry to be without feed and water. The Department notes that the Twenty-Eight Hour Law permits animals to be transported for up to 28 hours without access to feed and water. To the extent that the Twenty-Eight Hour Law applies to poultry, the Department declines to make its rules more stringent than those promulgated by the federal government and has adopted an exception to the general rule that the poultry must be given access to feed and water every 24 hours.

COMMENT: Research shows that transport for 28 hours without unloading for feeding and watering is too long. Available evidence suggests that 14 hours of transport is the maximum humane limit without food, water and rest.

RESPONSE: As noted above, poultry must not be transported for more than 24 hours without food and water; however, to the extent that the Twenty-Eight Hour

Law permits poultry to be transported for up to 28 hours without access to feed and water, the Department has permitted an exception to its rule. The Department disagrees that 14 hours should be the maximum time frame without food and water. The Department declines to make its rules more stringent than those promulgated by the Federal government.

N.J.A.C. 2:8-4.8(a)3

COMMENT: The proposed standards allow birds to be deprived of food and water for 24 hours and mistakenly reference the Federal law as justification.

RESPONSE: This paragraph was proposed in error. The Department notes that 9 C.F.R. Part 313.2 does not apply to poultry, and, indeed, this provision contradicts N.J.A.C. 2:8-4.5(j) which requires that birds, once delivered to their destination, may not be kept in crates, trays or carts for longer than 18 hours. This Department will not adopt N.J.A.C. 2:8-4.8(a)3.

Rabbits (Subchapter 5)

N.J.A.C. 2:8-5.1

COMMENT: The proposed regulations fall short of the standard protections afforded to research rabbits under the Federal Animal Welfare Act.

RESPONSE: The Animal Welfare Act, 7 U.S.C. §2131 et seq., specifically exempts rabbits (and other animals) that are raised for food or fiber. 7 U.S.C. §2132(g). The standards set forth for rabbits used in research need to provide uniform conditions and environments so as not to affect or call into question the

findings of the research. The intent of the proposed rule is to provide standards for rabbits raised for food and fiber not for research. The heightened standards necessitated by a scientific environment are not necessary for establishing appropriate standards for humane treatment of rabbits raised for food and fiber.

COMMENT: Commenters suggest standards to be employed in the slaughter of rabbits.

RESPONSE: The Department was charged with creating standards for raising, keeping, care, treatment, marketing and sale of domestic livestock. Slaughter, except as it may be used as a method of humane euthanasia, is beyond the scope of the rules.

COMMENT: If identification is necessary, colored marking pens can be used to mark ears.

RESPONSE: The Department agrees that colored marking pens can be used to mark ears as long as the substance in the marker is non-toxic. The Department notes that marking pens may not provide permanent marking for animals due to shedding of skin cells.

N.J.A.C. 2:8-5.1(a)1

COMMENT: Although some of the principles listed in this section are appropriate in determining rabbit welfare, others “suggest that welfare is held captive to economic concerns and production goals. For example, an animal’s well being could be negatively impacted by it’s production level, and therefore, ‘production level’ should be deleted.”

RESPONSE: The Department disagrees with the commenter. The rule's reference to "production level/stage of development of the animal" is one of the factors to be considered in determining whether the rules' standards have been met. Given that the rules govern rabbits raised for production, its inclusion here is both necessary and appropriate. The rules reflect the Department's responsibility to promote animal safety, health and well-being while simultaneously fostering industry security, sustainability and growth. The Department has written the standards to meet those complementary objectives. Production is enhanced by humane treatment. In order to provide standards for humane treatment the department has relied heavily on expert scientific and medical opinion.

COMMENT: The proposed standards require that the health of each species be assessed individually. This is necessary and beneficial as long as the intent is to protect the animals and is not used to excuse unacceptable body condition scores or detrimental feeding and watering practices. Unfortunately, the proposed standards render this requirement meaningless by permitting body condition scores and feeding and watering practices wholly insufficient to ensure animal health.

RESPONSE: As stated at N.J.A.C. 2:8-5.1(a)1, all determinations as to whether these standards for rabbits have been met shall take into account age, breed, type, physiologic condition, size, production level, stage of development, daily maintenance requirements necessary for that particular animal and environmental conditions. The rule requires that this standard which requires each rabbit to be assessed individually is to be used in conjunction with the remaining standards for

rabbits. Together, these protect the animal and provide for its humane treatment. For example, under the feeding provision, N.J.A.C. 2:8-5.2(a)1, each rabbit must have daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition. Compliance with the feeding standard also requires compliance with N.J.A.C. 2:8-5.1(a)1. For example, a dwarf adult rabbit primarily kept as a pet would not be fed the same as a lactating Giant Flemish doe. The Department notes that body condition scoring is not applicable to rabbits.

N.J.A.C. 2:8-5.2

COMMENT: Proposed N.J.A.C. 2:8-5.2(a) states, “each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition.” The phrase “and to prevent hunger and/or starvation” should be added to the end of this sentence.

RESPONSE: The addition of this terminology will not enhance the humane treatment of rabbits, as the standard requires daily access to sufficient and adequate nutrition to allow for growth and maintenance of an adequate body condition. While the condition of hunger is not measurable, the Department notes that an animal that is deprived of feed would not maintain an adequate body condition and its owner would be in violation of these rules.

COMMENT: Rephrase N.J.A.C. 2:8-5.2(a)1 to “each rabbit must have access to sufficient and nutritious feed.”

RESPONSE: The rule requires “daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition.” The rule is

more protective than the suggested language and, therefore, the Department declines to change the language.

COMMENT: The proposed regulation should take into account fluctuations in temperature for feeding requirements. With a decrease in environmental temperature, feed consumption is increased.

RESPONSE: N.J.A.C. 2:8-5.4(a) requires the rabbits' environment to provide relief from the elements such as excessive temperature. The provision addressing general conditions, as well as feeding and watering provides adequate protection for the animals. In addition, N.J.A.C. 2:8-5.1(a)1 requires that the feeding standard take into account environmental conditions.

COMMENT: The proposed regulations should also take into account the fact that the rabbit's digestive system is adapted for a diet of fibrous food.

RESPONSE: The rule requires that rabbits have daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition. (N.J.A.C. 2:8-5.2(a)1.) The rule requires individuals to be familiar with physiologic needs of rabbits and provide a diet accordingly.

COMMENT: Add the following to N.J.A.C. 2:8-5.2(a)2:

- 1) "Animals shall have a feeding plan that will guarantee a sufficient, varied and well-balanced diet. Animals shall have constant free access to clean fresh water and constant access to food."
- 2) "All rabbits shall be fed daily. Housing, stocking density and food distribution shall be designed to minimize competition for food."
- 3) "The feeding of animal products to rabbits is not allowed. The routine use of

sub therapeutic antibiotics, hormones or sulfas to control or mask disease or promote growth is not permitted.” 4) “Diets should be low in calorie and high in fiber...” The commenter specifies which vegetable and fruits should be used as well as the cooking prohibitions.

RESPONSE: The rule requires that each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of adequate body condition. In addition, the rule requires that each animal be assessed individually. The suggested diet would likely meet the rule’s requirement, as would housing to minimize competition for food. The proposed rule meets the intent of the comments. The Department notes that the FDA and USDA regulate administration of drugs and content of feed. Owners must comply with Federal law on those issues.

N.J.A.C. 2:8-5.3(a)1

COMMENT: Rabbits should be provided with a constant access to a plentiful supply of clean water. The Animal Welfare Act, 9 C.F.R. §3.55, requires that all watering receptacles be sanitized when dirty and at least every two weeks. New Jersey’s regulation should have similar provisions.

RESPONSE: The Department agrees that watering receptacles should be maintained in an appropriately clean condition. The requirements for water receptacles for research animals, however, are not necessarily appropriate for watering receptacles for domestic livestock. The rule requires water of sufficient quantity and quality to be available to satisfy the animal’s physiologic need. Owners must maintain their facilities in a manner that supports animal health.

This would include water receptacles. Given the differences in environments in which rabbits are raised, the Department declines to mandate specific cleaning schedules. The Department believes use of the term “quality” in its regulation addresses the commenter’s concerns.

COMMENT: There is concern that divergent interpretations regarding “physiologic needs,” “hydration status,” and maintenance requirements are obscure and can be misinterpreted to the detriment of the animal’s care.

RESPONSE: The rule states that each animal shall be assessed individually and have daily access to water in sufficient quantity and quality to satisfy the physiologic needs as evidenced by the animal’s hydration status. The Department disagrees that there will be many divergent interpretations of physiologic needs as there are well established medical criteria to determine hydration status. The Department will facilitate training on determining hydration status upon request.

COMMENT: Hydration status can be estimated in a number of ways, but the only one readily available to caretakers, animal control officers, or livestock investigators is physical examination, which requires knowledge, is partly subjective, and will not detect mild dehydration. For all species, standards should establish a minimum frequency of watering and amount per body weight. National Research Council guidelines can be used to establish appropriate minimums.

RESPONSE: The Department agrees that physical examination will often be the way in which hydration status is assessed. The Department will facilitate training

for persons who will make such assessments. Use of established medical criteria will minimize the subjective calls made by the inspector. The Department notes that a veterinarian may be employed to provide a definitive diagnosis regarding adequate hydration status. By requiring daily access to water in sufficient quality and quantity to satisfy physiologic needs, an appropriate guideline has been established. Owners are free to use NCR guidelines to determine watering schedules.

COMMENT: Failure to provide adequate water has been deemed cruel, inhumane and illegal in many states.

RESPONSE: The Department agrees that adequate water must be available to prevent cruel and inhumane treatment. The rule (N.J.A.C. 2:8-5.3) requires adequate water for rabbits. Maintenance requirements of rabbits may vary depending on factors listed in N.J.A.C. 2:8-5.1(a). The rule read in its entirety provides adequate information as to what is necessary for humane care.

N.J.A.C. 2:8-5.4

COMMENT: Commenter seeks rule setting forth specific size, construction materials, and placement of shelters for rabbits. The commenter suggested, among other things, that each rabbit have access to tunnels, a place of retreat with two openings, and have housing at least two feet wide by two feet deep and be covered; that housing should have wire floors at least eight inches below ground level and covered with at least six to eight inches of dirt topped with hay and surrounded by a cement perimeter that is three feet deep into the ground; housing should be spacious enough to allow the rabbit three hops in one direction and be

of sufficient height to allow rabbits to sit upright without their ears touching the top of the cage.

RESPONSE: Given variations in breeds, size requirements as suggested may be too small or unnecessarily large. Dirt is not essential for rabbit health and indeed may be detrimental if parasites are present. Constructed shelters require space for animals to stand, lie-down, rest, get up, turn around, and groom itself. The Department notes that the commenter's suggestions are overly specific and would be unduly burdensome. Housing that conforms to the rule's requirements provides a humane environment and support rabbits' health.

COMMENT: The rabbit pen must include bedding to allow expression of foraging and nest-building behaviors, comfort and warmth (preferably hay and straw).

RESPONSE: N.J.A.C. 2:8-5.4(a) requires the "rabbits' environment must provide relief from the elements such as excessive temperatures....that result in hyperthermia or hypothermia detrimental to the rabbits' health." The rule also requires that the environment supports rabbit health. There are different bedding materials and/or environments which could prevent hypothermia, keep the rabbits comfortable, and support a healthy environment. It is not necessary to prescribe just one type (straw). Hay is actually a feed source and depending upon the composition of the hay, it is usually not an appropriate bedding material. The Department will not require bedding for rabbits, but if bedding is not provided, the environment must support rabbit health.

COMMENT: The commenter seeks a rule setting forth specific size and construction type for shelter for breeding rabbits (wooden nest box, 11 to 12 inches wide and 18 inches long, solid on three sides). It further seeks a rule requiring a minimum age of eight weeks for kits.

RESPONSE: The commenter's suggestion does not allow for the vast size variation found between rabbit breeds. The combination of N.J.A.C. 2:8-5.1(a)1 and 5.4 require that age and breed be taken into account when providing shelter which includes space considerations and the need for accommodation of does and kits. The rules also state that the environment must support rabbit health. Setting a specific age for weaning is not necessary as the rules require that animals be given daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition. Kits may be kept with does or provided alternative food sources.

N.J.A.C. 2:8-5.4(a)

COMMENT: Remove the statement "detrimental to the rabbit's health" after hyperthermia or hypothermia. Hyperthermia and hypothermia are always undesirable for both the rabbit's health and welfare.

RESPONSE: By definition, hypothermia is a body temperature below what is normal for that species and hyperthermia is a body temperature above what is normal for that species. (As noted, and for the reasons set forth above, the Department is proposing an amendment to the definition of hyperthermia elsewhere in this issue of the New Jersey Register.) There are circumstances which may result in temporary slight changes in body temperature but which are

not detrimental to the animal's health such as exercise. The modifying term is necessary and appropriate.

COMMENT: The proposed standard requiring that each of the covered species be given "relief from the elements...that result in detrimental hyperthermia or hypothermia" is too vague. Guidance must be provided on the warning signs that might indicate the onset of these conditions.

RESPONSE: The Department expects that persons responsible for the care and keeping of animals as well as those charged with enforcing these standards should have general knowledge of animal behavior and species characteristics. The Department stands ready to facilitate training that will enable people to identify the clinical parameters that would indicate hyperthermia or hypothermia. The Department, given variables in species, age, breed, production level, environments, declines to codify such guidelines.

N.J.A.C. 2:8-5.4(b)

COMMENT: The regulations should require that rabbits be provided with shelter that keeps them dry and out of the wind during inclement weather and with a minimum space allowance of at least eight times the total body mass of the rabbit, consistent with the USDA Animal Care Resource Guide, Space Requirements.

RESPONSE: The rules under the section on "keeping" provide various specifications to protect rabbits from inhumane treatment, particularly by requiring environments that support rabbit health. More specifically, the animal's environment must provide relief from the elements, and if constructed shelters are provided, they must be of sufficient size to provide adequate space for each

animal seeking shelter within to stand, lie down, rest, get up, move its head freely turn around to groom itself, and have natural or mechanical ventilation to provide air quality and maintain an environment suitable for the animals. The Department notes that the Animal Care Resource Guide is used for research animals. While some producers may choose to provide the space as suggested by the commenter, the rules provide the minimum environmental space necessary to ensure no detrimental effect on the health and well being of animals.

COMMENT: The commenter seeks shelter that will protect from predators and elements and which gives access to daylight and fresh air.

RESPONSE: The standards as stated under N.J.A.C. 2:8-5.4(a) and (b)1i through vi require that the environment provide relief from the elements and other things that could be detrimental to the rabbits' health. Proper ventilation must also be provided and structures must be maintained at a level of repair to fulfill the rule's requirement. Buildings in which rabbits are raised may provide either natural or artificial light The Department does not believe that only natural light is essential for rabbit health.

N.J.A.C. 2:8-5. 4(b)1

COMMENT: Commenter seeks rules limiting time rabbits may be kept in cages and setting forth specific floor and height space requirements for pens, which will enable rabbits to exhibit normal behaviors.

RESPONSE: The rule provides criteria to allow rabbits to exhibit normal behaviors. N.J.A.C. 2:8-5.4(b)1i provides that shelters shall be of sufficient size to provide adequate space for each animal seeking shelter to stand, lie down, rest,

get up, move its head freely, turn around to groom itself and rest. The commenter's suggestions are not necessary to ensure humane treatment but the Department notes that producers may choose to provide such additional space.

N.J.A.C. 2:8-5.4(b)1iii

COMMENT: The regulations require a safe interior surface, reasonably free of injurious material. The commenter would like the word "reasonably" deleted.

RESPONSE: This provision is to be considered in conjunction with the other standards under "keeping" (N.J.A.C. 2:8-5.4), such as providing an environment that supports animal health. The proposed language of "reasonably free" was used because it is impossible to eliminate all possibilities of risk. For example, even standard equipment such as feed or water receptacles can be a source of injury under certain circumstances.

COMMENT: The fittings and other equipment in rabbit housing should not prevent the animals from behaving naturally, nor unwarrantably limit their freedom.

RESPONSE: The Department's rules require that constructed shelters and enclosed yards be maintained in a way to minimize risk to the animals. The rule also provides space requirements. The rules provide an appropriate environment to ensure humane treatment.

N.J.A.C. 2:8-5.4 (b)1v

COMMENT: Commenter suggests a rule requiring grouping of certain rabbits based on age and sex, separation of the rabbits if fighting occurs, and specific placement on regrouping.

RESPONSE: N.J.A.C. 2:8-5.4(b)1v requires that housing shall provide an environment that supports rabbit health. This provision allows for changes to be made if the groups are not compatible. The Department notes it requires that age, breed, type, physiologic condition, size, production level/stage of development and environmental conditions be considered in meeting the standards. The Department expects that producers will separate animals when fighting occurs and will be aware of the placement issues when regrouping occurs. The Department believes its regulatory scheme, when taken as a whole, addresses commenter's concerns.

COMMENT: Materials given to rabbits, whether bedding materials or occupational materials like sticks, should not be from treated wood that could have toxic chemicals in them.

RESPONSE: N.J.A.C. 2:8-5.4(b)1v states that the environment shall support rabbit's health. If any material had toxic substances, it would not support rabbits' health and, therefore, would be in violation of the rule. The Department declines to make the change as the rule addresses the concern.

N.J.A.C. 2:8-5.4(c)

COMMENT: Commenters object to the terms "actual threat" and "minimized" as vague or ambiguous. They recommend that hazardous objects be "completely neutralized" and that "actual threat" should be better defined to preclude the

possibility that animals would first have to be injured before action is taken by caretakers, animal control officers, or livestock inspectors.

RESPONSE: The rule is not vague or ambiguous. The rule's requirement that sharp objects and debris that pose an actual threat to the rabbit's health be minimized is an appropriate description of the types of hazards that should be addressed. Actual threat does not mean an animal must be first injured rather, the term speaks to the likelihood that the animal will be injured given facts such as the size of the animal, amount of space available and time spent in environment. The rule specifically requires that if stationary objects which pose a risk of injury cannot be removed, reasonable efforts must be made to minimize contact by fencing off or covering the object or similar means. If objects are not stationary, the rule requires that actual threats to the animal's health shall be minimized to reduce the risk of injury. This construction recognizes that not all objects will present an actual threat to the animal but requires the owner to take action to prevent harm.

N.J.A.C. 2:8-5.4(c)1 and 2

COMMENT: The Department fails to address the hazards and necessity for protection from predators.

RESPONSE: The rule, which details standards for constructed shelters as well as enclosed yards, will provide some protection from predators. Common sense dictates that owners will take steps to protect the animals from predators. Should the Department determine this is a problem, further rulemaking may ensue.

N.J.A.C. 2:8-5.4(d)

COMMENT: Constructed shelters should have solid-surface flooring or floor covering, as rabbits are not equipped to adequately support themselves on wire or lattice flooring; multi-tiered systems should be prohibited.

RESPONSE: The rule requires that constructed floor surfaces on which rabbits are kept must provide footing that minimizes injury to the rabbits. Moreover, the rule for constructed shelters requires an adequate space, structural soundness, safe interior surfaces, suitable environment, an environment that supports an animal's health, and that they be maintained at a level of repair to ensure those requirements are met. The Department notes that the Animal Welfare Act does not require solid flooring for rabbits. If multi-tiered systems are used, they must be maintained in an appropriate manner.

COMMENT: The rule should include a provision for clean, dry straw bedding maintained in a manner which ensures good hygienic quality supplied in sufficient quantities to the rabbit to nest and burrow and facilitates a rabbit's natural gnawing behavior.

RESPONSE: It is not necessary to require a specific type of bedding as the provisions as stated in N.J.A.C. 2:8-5.4(b)1v mandate that the environment supports rabbits' health. The Department notes other environments will allow rabbits to thrive and requiring only one type of bedding may put an undue burden on an owner (for example, straw may not be available in all locations). In addition, bedding may not be necessary if the environment without it supports rabbits' health.

COMMENT: Commenters seek specific rules relating to cleanliness of rabbit housing and requiring cleaning protocols to ensure rabbits are not afflicted with diseases.

RESPONSE: N.J.A.C. 2:8-5.4(b)1v mandates that the environment supports rabbits' health. Unclean environments detrimental to the rabbits are prohibited under this provision. It is not necessary to mandate a specific cleaning schedule (which is difficult to document) to prevent disease. The Department notes that pursuant to N.J.A.C. 2:8-5.7, sick or injured rabbits must be promptly treated or removed and humanely euthanized.

COMMENT: The Department should adopt language to ensure that rabbits in agriculture are afforded the same protection as the Animal Welfare Act (AWA) affords rabbits in research.

RESPONSE: This comment is not specific as to which provisions of the proposed regulation should reflect the standards of the AWA. The rule provides standards for the humane treatment and care of rabbits raised for food and fiber and in some instances are similar to the AWA standards (for example, facilities need adequate ventilation to support animal health). The conditions required for rabbits in research must be such as not to interfere with the research results and, therefore, may be more stringent.

N.J.A.C. 2:8-5.5(a)

COMMENT: This provision should mandate appropriate humane training for all transporters in accordance with proposed N.J.A.C. 2:8-8.1(b)1i.

RESPONSE: The rule's requirements for transportation of animals apply to transporters who must comply with those requirements. The Department expects persons responsible for transport to have basic knowledge of animal behavior. If training is necessary, the Department will facilitate such training but will not require it.

COMMENT: The provision should make clear that the owner of the animals is also responsible for the welfare of the animals at all times, including transport.

RESPONSE: The rule states that the driver of the transport vehicle and/or the person who is present in the vehicle for purposes of transporting the cattle shall be responsible for the welfare of the animals at all times during transport. This is consistent with the standards of European Union, Canada and other countries. Owners are expected to select transporters who have appropriate knowledge of animal welfare and who will comply with the Department's regulations. Because owners have an interest in the well being of their animals during transport, they will take appropriate steps for the animals' welfare. The Department does not believe the suggested change is necessary.

COMMENT: Animals shall be transported without delay and in a manner to avoid injury or suffering.

RESPONSE: N.J.A.C. 2:8-5.5 provides: "Rabbits transported for any purpose must be handled (loaded and off loaded) in a way that minimizes injury, illness and death." In addition, N.J.A.C. 2:8-5.5(d) requires that rabbits be transported

with minimal delay. The comments are already incorporated into the rule; therefore, no change is necessary.

N.J.A.C. 2:8-5.5(b)

COMMENT: Commenters assert that the language “minimizes injury, illness and death” is vague and does not give producers or enforcement officials guidance to determine satisfactory outcomes.

RESPONSE: The rule specifically requires that handling and transporting be undertaken to minimize adverse affects on animals. Transporters or owners are expected to have basic knowledge of animal behavior and should identify conditions that are hazardous to animal health. The Department will facilitate training as necessary. Itemizing events or conditions that would minimize adverse events is a nearly impossible task given the various situations that arise during transport. The rule’s use of the term minimize, whose commonly understood meaning is “to reduce or to keep to a minimum” (Webster’s New Encyclopedic Dictionary, Merriam-Webster, Inc., 2002), advises both owners and enforcement officials of the obligations imposed by the rules.

COMMENT: N.J.A.C. 2:8-5.5(b) lacks standards for applying terms such as minimal delay and adequate ventilation.

RESPONSE: The words are to be given their commonly understood meaning. The Department’s rule at N.J.A.C. 2:8-5.5(c)4 requires that crates and carts for transport must be ventilated properly. When read with the other provisions of the rule which are designed to ensure the rabbits’ health during transport, sufficient guidance is provided.

COMMENT: Commenter believes this section should be revised to require that rabbits are protected from the weather, exposure to undue fluctuations in temperature, humidity or air pressure; unnecessary exposure to noise or vibration; and unnecessary suffering by lack of food or water. The provision should ensure that rabbits are handled and carried humanely, are not overcrowded, are inspected at appropriate intervals, are contained in a vessel that allows for adequate ventilation, are transported to their destination as soon as possible, delays are minimized, and all steps taken to prevent them from escaping or falling from the vehicle.

RESPONSE: The proposed rule addresses the above concerns as written. N.J.A.C. 2:8-5.5(b) through (f) require:

“(b) Rabbits ... [to] be handled ... and transported in a manner that minimizes injury, illness and death.

(c) Crates or carts for transport must be

1. Designed such that loading, transport, and removal of rabbits may be carried with minimal injury and mortality;
2. Designed to remain intact during normal processing;
3. Constructed to confine the rabbits; and
4. Ventilated properly.

(d) Rabbits must be transported with minimal delay.

(e) Rabbits shall be provided with adequate ventilation during transport.

(f) During transport, the rabbits' environment must provide relief from the elements that result in hypothermia or hyperthermia detrimental to the animal's health."

COMMENT: The vague language of "manner that minimizes injury, illness and death" is not specific enough to prevent overcrowding; the Department should set maximum occupancy and minimum space requirements.

RESPONSE: As noted above, the rule's language is appropriate. The rule's requirements regarding ventilation, crate design, and relief from elements, when coupled with the rule's requirements to take into account age, breed, type, size of animal, as well as environmental conditions, will guard against the commenter's concerns regarding overcrowding.

N.J.A.C. 2:8-5.5(c)

COMMENT: Commenter seeks specific requirements for transport of rabbits, including individual containers for adult rabbits and limiting the number of young rabbits in containers (10), space requirements (be able to stand up and lie down), floor coverings (solid, nonslip), and doors (large enough for easy access and egress).

RESPONSE: As noted above, the proposed rule provides for the humane handling of rabbits during transport. They must be handled in a manner that minimizes injury, illness and death; containers must be designed to remain intact during normal processing; be constructed to confine rabbits and provide adequate ventilation. All of the rules' requirements must take into consideration age, breed, and types of animals. The Department notes owners and transporters are

free to employ practices such as those outlined by the commenter as long as the Department's rules are met.

COMMENT: The containers in which rabbits are transported must be thoroughly cleaned prior to loading, allow for inspection and care of animals and not be stacked in a way which interferes with ventilation. They also must have a mark indicating the upright position and a symbol showing they contain live animals.

RESPONSE: The standards require that the rabbits be transported in manner that minimizes injury, illness, or death. In order to prevent or minimize the risk of illness, it is expected that owners and transporters will take appropriate steps to ensure the vehicles and containers are maintained appropriately. The rules further require that the containers be ventilated properly. Mandating specific markings on a container is not necessary under all circumstances. In fact, this is required by 9 C.F.R. Part 3.61 when using commercial carriers for hire. An individual transporting one rabbit to a show, when not using a commercial carrier, may not need a marked container.

N.J.A.C. 2:8-5.5(d)

COMMENT: Commenters assert that the term "minimal delay" should be defined or specific times should be mandated, with adequate stops for rest and water.

RESPONSE: The term "minimal delay," when read in conjunction with the remainder of the rules, provides sufficient guidance. The Department notes that given the variables in transportation (weather, vehicle breakdowns, etc.), it is neither practical nor desirable to define the term with more specificity. In reviewing comments, the Department recognized it had erred in proposing a rule

that would permit rabbits to go without feed and water for up to 24 hours. The Department is not adopting N.J.A.C. 2:8-5.5(g) and 5.8(a)2 and 5.8(a)3 relating to length of time without feed or water and is proposing a rule to address this issue.

N.J.A.C. 2:8-5.5(e)

COMMENT: The phrase “adequate ventilation”- an additional requirement for animals during transport - should be clarified.

RESPONSE: The term “adequate ventilation” must be read in context of complete rule, which requires consideration of the animal’s size, age, breed, etc.; requires transport in a manner that minimizes injury, illness and death, and relief from the elements; and requires crates to be ventilated properly. The rule provides appropriate guidance for transporters and enforcement officials.

N.J.A.C. 2:8-5.5(f)

COMMENT: Remove the statement “detrimental to the rabbit’s health” after hyperthermia or hypothermia. Hyperthermia and hypothermia are never comfortable conditions and animals in hyperthermic or hypothermic conditions must be provided relief immediately.

RESPONSE: By definition, hypothermia is a body temperature below what is normal for that species and is a body temperature above what is normal for that species. (As noted, and for the reasons set forth above, the Department is proposing an amendment to the definition of hyperthermia elsewhere in this issue of the New Jersey Register.) Slight changes in body temperature may not be detrimental to the animal’s health (for example, after exercise). Where such

change in temperature is detrimental, failure to provide relief would violate the rule.

COMMENT: The Department should include language requiring “if a stop is inevitable, the vehicle should be parked in the shade during hot weather and in a sheltered place during the cold weather bearing in mind adequate ventilation in either case.”

RESPONSE: The rule states that adequate ventilation (N.J.A.C. 2:8-5.5(e)) and relief from elements (N.J.A.C. 2:8-5.5(f)) must be provided. Because the rule already provides the protection suggested, the commenter’s suggested addition is not necessary.

COMMENT: The proposed rule is too vague, and guidance must be provided on the warning signs (for example, hazardous body temperatures) that might indicate the onset of the conditions “hypothermia” or “hyperthermia.”

RESPONSE: Hyperthermia and hypothermia are actual conditions which may impact an animal’s health if the variation in body temperature is significant. Physical examination of the animal with manifestations of hyperthermia and hypothermia such as changes in heart rate, respiration rate, body temperature changes, etc., may demonstrate these conditions. The Department will facilitate training that will assist people in identifying the clinical parameters as necessary.

N.J.A.C. 2:8-5.5(g)

COMMENT: Commenters state that referring to a Federal regulation to permit withholding of food and water for up to 24 or 28 hours is incorrect, as it does not apply to rabbits. They suggest alternative time frames.

RESPONSE: The Department acknowledges the error in the proposal. 9 C.F.R. § 313.2(e) is a statement of policy under the Twenty-Eight Hour Law which does not apply to rabbits. Moreover, the Department has determined that the time frames set forth in the Federal rule would be inimical to rabbit health and therefore, the Department will not adopt subsection (g). Simultaneously with this adoption, the Department will repropose N.J.A.C. 2:8-5.5(g) to reflect an appropriate time frame.

N.J.A.C. 2:8-5.6(a)

COMMENT: Commenters seek specific language to ensure that rabbits are not lifted or carried inappropriately including the manner in which they are caught.

RESPONSE: The rule provides for the humane care of rabbits during handling as it requires that rabbits be caught, carried and removed in a manner that minimizes injury, and that the number of times a rabbit is handled should be minimized. The Department declines to delineate specific handling procedures as it attributes basic understanding of animal health and behavior to owners, handlers, and transporters.

N.J.A.C. 2:8-5.6(c)

COMMENT: In the statement “The time between capture and slaughter shall be minimized to the extent possible consistent with food safety considerations,” replace “minimized” with “minimal.”

RESPONSE: Minimized is more appropriate in this context; the suggested change would not add to or clarify the rule.

COMMENT: Rabbits should be unloaded and slaughtered as soon as possible after arrival at the slaughterhouse and handled as little as possible up to the point of slaughter.

RESPONSE: The rule’s requirement that the time between capture and slaughter be minimized reflects the commenter’s suggestions. The Department does not believe a change is necessary.

N.J.A.C. 2:8-5.7(a)

COMMENT: Rabbits should be checked once a day; sick or injured animals should receive treatment or be humanely euthanized, and if ill, should not be transported.

RESPONSE: N.J.A.C. 2:8-5.7 requires that “sick or injured rabbits must be promptly treated or removed and humanely euthanized.” The rule’s requirement that dead rabbits be removed from contact with live rabbits within 24 hours provides the daily inspection contemplated by the commenter. Because the rule addresses the commenter’s concerns, no change is necessary.

COMMENT: The regulations should explicitly require veterinary care for rabbits who are sick or injured within a stated period of time and that such care should return the animal to full health. In the event the rabbits do not recover, they should be taken out of the production cycle to recover or humanely euthanized.

RESPONSE: The rule states: “[s]ick or injured rabbits shall be promptly treated or humanely euthanized,” (N.J.A.C. 2:8-5.7(a)), and “proper medical care for the diagnosis or management of injury or disease must be provided to sick or injured animals.” N.J.A.C. 2:8-5.7(d). The rule, consistent with N.J.S.A. 45:15-8.1, permits owners to administer to the ills and injuries of their own animals. N.J.A.C. 2:8-5.7(d)1. While there are occasions when veterinary care will be necessary, the Department declines to identify specific circumstances under which such care is mandated due to the broad spectrum of illnesses and injuries and the varying capabilities of owners to treat such illnesses or injuries.

COMMENT: Rabbits’ nails should be trimmed on a regular basis, no less than every six weeks, to prevent them from growing too long and becoming sharp which is uncomfortable for the rabbit.

RESPONSE: N.J.A.C. 2:8-5.7(a) requires that sick or injured rabbits must be promptly treated. If the nails become too long as to cause injury, they would have to be trimmed. The Department declines to make the suggested change.

N.J.A.C. 2:8-5.7(b)

COMMENT: The rule that sick, injured and dead animals must be removed from contact with live animals within 24 hours is too permissive. The time frame should be reduced, for example, where a carcass poses a health risk to other animals.

RESPONSE: Depending on the environment, some animals are checked once a day during feeding time. Moreover producers may not know the precise time of death. The 24-hour time frame, which is the maximum time frame, will ensure prompt removal. The Department notes further that owners will likely be aware of conditions of their animals and that they are required to ensure sick or injured animals are treated or humanely euthanized.

COMMENT: Animals that do not recover should be humanely euthanized at the farm and not transported.

RESPONSE: The rules require that the animal be humanely euthanized consistent with the American Veterinary Medical Association Report on euthanasia and that it be done by knowledgeable individuals who are skilled in the methods used. The Department will not require euthanasia on the farm as such facilities may not have the equipment or personnel necessary to meet the rule's requirements. The Department notes that in some instances, although an animal may not "recover," the illness or injury may be one that does not require the animal to be euthanized.

COMMENT: Commenter suggests that N.J.A.C. 2:8-5.7 be amended to add a section pertaining to thermoregulation in rabbits.

RESPONSE: The subchapter detailing the feeding, watering, keeping and handling of rabbits recognizes issues related to temperature, humidity, and ventilation. As such N.J.A.C. 2:8-5.7 need not be amended.

N.J.A.C. 2:8-5.7(e)2

COMMENT: Commenters assert that the term “routine husbandry practices” is vague, fails to consider whether the practices are humane, and should be deleted.

RESPONSE: The Department, after review of comments received, has determined that its definition of routine husbandry practices needs clarification. Simultaneously with this adoption, in a notice of proposal published elsewhere in this issue of the New Jersey Register, the Department will propose to amend the definition of “routine husbandry practices” to refer to techniques commonly taught by veterinary schools, land grant colleges and agricultural extension agents for the benefit of animals, the livestock industry, animal handlers and the public health and are employed to raise, keep, care, treat, market and transport livestock. The benefits to the animal, the need for specific training, (for example, a veterinarian), and humaneness of the practice are core components of the methods taught by those institutions. In the interim, the rule, which requires that knowledgeable individuals perform the procedures, given the age, breed, physiologic condition, etc., in a way to minimize pain, is appropriate.

COMMENT: If a routine procedure does not require the services of a veterinarian, the standards should make clear what can be done and at what ages.

RESPONSE: The rule, which requires procedures to be performed by a knowledgeable individual in a way to minimize pain, is appropriate. The Department notes that its proposed amendment to the definition will further clarify this issue.

N.J.A.C. 2:8-5.7(e)2

COMMENT: Commenter suggests that castration of rabbits be performed at specific ages and with an anesthetic.

RESPONSE: The rules do not specify when castration of rabbits may be performed. The Department expects producers to have baseline knowledge of animal health. Moreover, such procedures must be performed by a knowledgeable individual and be done in a way to minimize pain. The Department does not believe it is necessary to adopt a time specific rule. The Department expects that techniques will be performed in a manner consistent with the teachings of vet schools, land grant colleges, and agricultural extensions.

COMMENT: Commenter suggests that providing rabbits with “appropriate materials...to fulfill instinctive behaviors” should “eliminate the need for routine mutilations.”

RESPONSE: The commenter was not specific as to what routine mutilations are. To the extent that the commenter is referring to routine husbandry practices, such as tooth trimming, those practices, when done pursuant to rules, are neither mutilations nor inhumane.

N.J.A.C. 2:8-5.8(a)2

COMMENT: Commenters object to time frames for transporting rabbits or holding rabbits in pens without food and water.

RESPONSE: As noted above, the Department acknowledges N.J.A.C. 2:8-5.8(a)2 and 3 were proposed in error. The Twenty-Eight Hour Law does not apply to the transportation of rabbits and as noted above, 9 C.F.R. § 313.2(e) similarly does not apply. As such, the Department is not adopting N.J.A.C. 2:8-5.8(a)2 and 3 and is proposing a new N.J.A.C. 2:8-5.5(g) to set forth appropriate time frames, elsewhere in this issue of the New Jersey Register.

COMMENT: The entire exception section should be deleted as allowing any exceptions would compromise the well being of animals.

RESPONSE: As noted above, the Department is not adopting N.J.A.C. 2:8-5.8(a)2 and 3. The Department does not believe N.J.A.C. 2:8-5.8(a)1, which permits an exception for rabbits under the direct care of a veterinarian who can provide a medically supportable written explanation for the condition, should be deleted. The Department notes that veterinarians are licensed by the State Board of Veterinary Medical Examiners and must treat animals within the standard of care in this state and comply with the ethics, standards and laws set forth in N.J.S.A. 45:16-1 et seq. and N.J.A.C. 13:44. It is appropriate where an animal is under the care of a professional to defer to the veterinarian's professional judgment.

Small Ruminants (Subchapter 6)

N.J.A.C. 2:8-6.1(a)1

COMMENT: Sheep do not require a permanent enclosure available for shelter at all times. They are quite content with suitable vegetative shelter when out on fields. This is true in winter as well as in the other seasons. Shade should be provided in high temperatures. Windbreaks are needed against cold wet winds. They do need water provided, though 24-hour availability is not necessary. Docking and castrating do create discomfort for lambs, with different techniques and timing of the work having an effect on this; however, this is not a long lasting or even in some cases a major discomfort if done properly. I can think of several experiences in my life that I would compare to these actions and I don't find them worthy of a law prohibiting them.

RESPONSE: The rules require the humane raising, treatment, care, marketing, and sale of small ruminants, including sheep, and all producers would have to comply with these regulations. As long as those standards are met, the practices noted by the commenter would be consistent with these rules.

COMMENT: Small ruminants should not be grouped together. Specific standards should be developed for each species.

RESPONSE: The Department recognizes the difference in genus and/or species as reflected in N.J.A.C. 2:8-6.1(a)1 which requires that the breed or type of the animal is to be considered when meeting the rules' standards. The Department expects that, consistent with those considerations, owners will group ruminants appropriately.

COMMENT: Commenters seek deletion of "production level/stage of development of the animal," with one noting that while some of the principles

listed in this section are appropriate in determining small ruminant welfare, others “suggest that welfare is held captive to economic concerns and production goals. For example, an animal’s well being could be negatively impacted by it’s production level.”

RESPONSE: The Department disagrees with the comment. The rule’s reference to “production level/stage of development of the animal” is one of the factors to be considered in determining whether the rules’ standards have been met. Given that the rules govern small ruminants raised for production, its inclusion here is both necessary and appropriate. The rules reflect the Department’s responsibility to promote animal safety, health and well being while simultaneously fostering industry security, sustainability and growth. It has written the standards to meet those complementary objectives. Production is enhanced by humane treatment. In order to provide standards for humane treatment, the Department relied heavily on expert scientific and medical opinion.

COMMENT: The commenter asserts the proposed standards for feeding and watering are wholly insufficient to ensure animal health.

RESPONSE: The rule requires daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition and requires that each small ruminant have daily access to water in sufficient quantity and quality to satisfy the animal’s physiologic needs as evidences by the animal’s hydration status. Averaging the treatment or condition of the herd or group is not permitted. The standards are appropriate and will ensure animal health.

N.J.A.C. 2:8-6.2

COMMENT: Proposed N.J.A.C. 2:8-6.2(a) states, “each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition.” The phrase “and to prevent hunger” should be added to the end of this sentence.

RESPONSE: The addition of this terminology will not enhance the humane treatment of small ruminants as the standard requires daily access to sufficient and adequate nutrition to allow for growth and maintenance of an adequate body condition. While the condition of hunger is not measurable, the Department notes that an animal that is deprived of food would not maintain an adequate body condition and its owner would be in violation of these rules.

COMMENT: We urge the Department to require a diet consisting of at least 40 percent overall fiber content of total ingested food.

RESPONSE: Specific dietary requirements vary based on the many variables identified in the rule including, but not limited to age, breed, species, physiologic condition, etc. For example, requiring a neonate to consume a diet of at least 40 percent fiber is not recommended. This rule requires daily access to sufficient and nutritious feed to maintain an adequate body condition, which will include fiber in some form. The Department declines to mandate a specific percentage of fiber content in the diet.

COMMENT: Grazing lands and croplands should not be fertilized with sewage sludge and/or any recycled fertilizer (other than manure).

RESPONSE: As to sewage sludge, the Department notes that the Department of Environmental Protection regulates the sludge and the uses to which it can be put.

The Department will defer to the expertise of its sister agency as to whether the use of any type of sludge (for example, exceptional quality sludge) should be permitted. Recycled fertilizer is regulated by the Agricultural and Natural Resources and compliance with all pertinent rules and regulations regarding is required.

COMMENT: Feed shall consist of a vegetarian diet of grains, alfalfa, or roughage in some combination, and shall never contain animal by-products of any kind.

RESPONSE: The Food and Drug Administration regulates the content and production of animal feed and, where appropriate, has eliminated or limited animal byproducts in feed. It is not necessary to further limit the types of feed available. Owners may choose to provide a vegetarian diet as long as the animal is receiving sufficient and nutritious feed.

COMMENT: There should be a constant flow of fresh water and troughs should be cleaned regularly. Concrete slabs or packed earth should be provided at the troughs, and the distribution of feed and water should be designed to eliminate competition.

RESPONSE: The rule requires sufficient quality and quantity of water to satisfy the animal's physiologic needs. The Department agrees that watering receptacles should be maintained in an appropriately clean condition. Owners must maintain their facilities in a manner that supports animal health. This would include water receptacles. The use of the term "quality" in the regulation addresses the concern. Given varied environments, there can be healthy environments without concrete/packed earth (such as troughs in pasture or wooded areas), so the

Department will not require it. It notes that areas where animals are kept must be maintained in a manner to support animal health. The totality of the rule (each animal assessed individually, environment supporting animal health) addresses the commenter's concerns regarding competition.

COMMENT: Salt-mineral mix should be made available at all times.

RESPONSE: Depending on type of feed, these may not be needed. Daily access to sufficient and nutritious feed is required. The Department declines to require a specific type of mineral.

COMMENT: Lambs should not be grazed in environmentally sensitive areas, nor should their grazing force competition with indigenous ranging species.

RESPONSE: The Legislature's directive to the Department was to create standards for the humane treatment of domestic livestock. The Department notes that the Department of Environmental Protection regulates environmental issues as well as wildlife. While the Department is aware of the commenter's concerns, it does not believe the commenter's suggestion is necessary or appropriate to this rulemaking.

N.J.A.C. 2:8-6.2(a)1

COMMENT: Rephrase to: "Each small ruminant shall have access to fresh food."

RESPONSE: The standard regarding daily access to sufficient and nutritious feed is adequate. The Department is unclear about the commenters reference to "fresh." However, if the commenter means that only fresh grass or other vegetation should be allowed, that is an unnecessary requirement as hay, silage,

grains and other feed that would not fall in this category are acceptable small ruminant feed. If producers may choose to provide “fresh feed,” it must provide growth or maintenance of adequate body condition.

N.J.A.C. 2:8-6.3(a)

COMMENT: Commenters state that small ruminants should be provided with a constant access to a plentiful supply of water. European law requires that “all animals must have access to a suitable water supply or be able to satisfy their fluid intake needs by other means.”

RESPONSE: The rule states that each animal shall be assessed individually and have daily access to water in a sufficient quantity and quality to satisfy the physiologic needs as evidenced by the animal’s hydration status. This standard is similar to the European Union example given by the commenter.

COMMENT: There is concern that there will be many divergent interpretations regarding what exactly is meant by the animals’ “physiologic needs” and “hydration status.”

RESPONSE: The Department disagrees that there will be many divergent interpretations of “physiologic needs” or “hydration status.” An animal’s physiologic need is its individual, biologic requirement for water which is influenced by the animal’s age, level of activity, environment in which it is kept, production status, etc. While there can be significant variations of physiologic needs, these are determined by the animal’s hydration status. There are well-established medical criteria to determine hydration status. The Department will facilitate training on determining hydration status upon request.

N.J.A.C. 2:8-6.3(b)

COMMENT: Hydration status can be estimated in a number of ways, but the only one readily available to caretakers, animal control officers, or livestock investigators is physical examination, which requires knowledge, is partly subjective, and will not detect mild dehydration. For all species, standards should establish a minimum frequency of watering and amount per body weight. National Research Council guidelines can be used to establish appropriate minimums.

RESPONSE: The Department agrees that physical examination will often be the way in which hydration status is assessed. The Department will facilitate provide training for persons who will make such assessments. Use of established medical criteria will minimize the subjective calls made by the inspector. The Department notes that a veterinarian may be employed to provide a definitive diagnosis regarding adequate hydration status. The Department does not agree that there is a need to establish minimum frequency watering schedules as suggested. By requiring daily access to water in sufficient quality and quantity to satisfy physiologic needs, an appropriate guideline has been established. Owners are free to use NCR guidelines to determine watering schedules.

N.J.A.C. 2:8-6.4

COMMENT: Living environments for lambs should permit animals' free movement to exhibit natural behaviors, be clean and should eliminate the risk of injury or harm.

RESPONSE: The rules which cover lambs as well as other small ruminants require an environment that supports small ruminant health. Constructed shelters must be of sufficient size to allow the animal seeking shelter to stand, lie down, rest, get up, groom itself and move its head freely. As such, the rules provide for exhibition of normal behaviors. The rules further provide that constructed shelters and enclosed yards be reasonably free of objects that pose a risk to the animals.

COMMENT: Predator control should consist of harmless methods and should coincide with all Federal, State, and local governmental regulations and, when necessary, the local Wildlife Service should be consulted to help curb predator loss.

RESPONSE: The proposed rule, which details standards for constructed shelters as well as enclosed yards, will provide some protection from predators. Common sense dictates that owners will take steps to protect animals from predators. Owners are expected to follow Federal, State and local regulations. The Department agrees that Wildlife Services are a valuable resource for owners.

N.J.A.C. 2:8-6.4(a)

COMMENT: Remove the statement "detrimental to the animal's health" after hyperthermia or hypothermia. Hyperthermia and hypothermia are always undesirable for both the animal's health and welfare.

RESPONSE: By definition, hypothermia is a body temperature below what is normal for that species and hyperthermia is a body temperature above what is normal for that species. (As noted, and for the reasons set forth above, the Department is proposing an amendment to the definition of hyperthermia elsewhere in this issue of the New Jersey Register.) There are circumstances which may result in temporary slight changes in body temperature but which are not detrimental to the animal's health such as exercise. The modifying phrase is appropriate.

COMMENT: The Department should mandate species-appropriate communal housing for small ruminants that allows each animal the ability to turn around without hindrance and permit full, unimpeded lateral recumbency.

RESPONSE: The Department's standards for keeping requires owners to consider age, breed, type, physiologic condition, size, production level/stage of development of the animal, the animal's daily maintenance requirements and environmental conditions. The rules further provide that in constructed shelters, the animal has the ability to stand, lie down, rest, get up, groom itself, and move it's head freely. This provides a baseline standard for humane treatment and notes that owners may provide space for animals to turn around and lie down with legs outstretched if they chose.

COMMENT: The proposed standard requiring that each of the covered species be given "relief from the elements...that result in detrimental hyperthermia or hypothermia" is too vague. Guidance must be provided on the warning signs that might indicate the onset of these conditions.

RESPONSE: The Department expects that persons responsible for the care and keeping of animals as well as those charged with enforcing these standards should have general knowledge of animal behavior and species characteristics. The Department stands ready to facilitate training that will enable people to identify the clinical parameters that would indicate hyperthermia or hypothermia. The Department, given variables in species, age, breed, production level, environments, declines to codify such guidelines.

N.J.A.C. 2:8-6.4(b)

COMMENT: The regulations should require that small ruminants be provided with shelter that keeps them dry and out of the wind during inclement weather.

RESPONSE: The rules under the section on “keeping” provide various specifications to protect small ruminants from inhumane treatment, especially that they require environments that support small ruminant health. More specifically, the animal’s environment must provide relief from the elements. Such relief may be provided by natural features (such as trees, land windbreaks) or by constructed shelters. If constructed shelters are provided they must be of sufficient size to provide adequate space for each animal seeking shelter within to stand, lie down, rest, get up, move its head freely and have natural or mechanical ventilation to provide air quality and maintain an environment suitable for the animals.

COMMENT: Each animal should be provided with an adequate amount of dry straw provided to keep the animal comfortable in cold weather.

RESPONSE: The Department will not require that bedding material be utilized as there are natural environments, such as pastures, where this is not necessary nor

practical. Moreover, the rules require that the animal's environment, which must support the animal's health, must provide relief from the elements to prevent hypothermia. There are different bedding materials and/or environments other than straw which will protect the animal in cold weather. A rule requiring straw bedding is not necessary.

N.J.A.C. 2:8-6.4(c)3

COMMENT: Remove the word "reasonably" in N.J.A.C. 2:8-6.4(c)3 which requires interior surfaces to be reasonably free of injurious matter.

RESPONSE: This provision is to be considered in conjunction with the other standards under "keeping" (N.J.A.C. 2:8-6.4), such as providing an environment that supports animal health. The proposed language of "reasonably free" was used because it is impossible to eliminate all possibilities of risk. For example, even standard equipment such as feed or water receptacles can be a source of injury under the certain circumstances.

N.J.A.C. 2:8-6.4(d)

COMMENT: Commenters object to the terms "actual threat" and "minimized" as vague or ambiguous. They recommend that hazardous objects be "completely neutralized" and that "actual threat" should be better defined to preclude the possibility that animals would first have to be injured before action is taken by caretakers, animal control officers, or livestock inspectors.

RESPONSE: The rule is not vague or ambiguous. The rule's requirement that sharp objects and debris that pose an actual threat to the animal's health be

minimized is an appropriate description of the types of hazards that should be addressed. Actual threat does not mean an animal must be first injured; rather, the term speaks to likelihood that the animal will be injured given facts such as the size of the animal, amount of space available and time spent in environment. The rule specifically requires that if stationary objects which pose a risk of injury cannot be removed, reasonable efforts must be made to minimize contact by fencing off or covering the object or similar means. If objects are not stationary, the rule requires that actual threats to the animal's health shall be minimized to reduce the risk of injury. This construction recognizes that not all objects will present an actual threat to the animal but requires the owner to take action to prevent harm.

N.J.A.C. 2:8-6.4(e) and (f)

COMMENT: Commenters state that the Department should mandate solid surface flooring.

RESPONSE: The rule requires that constructed floor surfaces must provide footing that minimizes injury to small ruminants. The rule further requires constructed shelters, adequate space, structural soundness, safe interior surfaces, suitable environment, an environment that supports animal's health, and that they be maintained at a level of repair to ensure those requirements are met. The standards provide for safe flooring. The Department declines to mandate solid surface flooring.

COMMENT: The rule should mandate clean, dry straw bedding maintained in a hygienic manner and supplied in sufficient quantities to be used as bedding material.

RESPONSE: It is not necessary to require bedding materials as the rule requires an environment that supports animal health and other environments may be appropriate (for example, pasture or natural ground conditions).

N.J.A.C. 2:8-6.4(f)

COMMENT: The regulation must specify what “suitable for small ruminant health” means in connection with bedding.

RESPONSE: The Department expects that owners have basic knowledge of animal health and behavior. Some bedding materials may not be appropriate (for example, wood treated with substances toxic to the animals) and as such would not be suitable and in fact would not support animal health. The regulation in its entirety provides ample guidance for owners and enforcers. If further training on this issue is necessary, the Department will facilitate such training.

COMMENT: This section fails to address the frequency that bedding is to be changed in order to be kept “reasonably clean.” In addition, there is no standard for what constitutes “reasonably clean.”

RESPONSE: It is not practical to set specific standards on the frequency of bedding changes due to the variation between materials used, environment and species of small ruminant involved. Small ruminants may include sheep and goats but may also include members of the camelid family as well as cervids such

as deer and elk. The rule provides the humane care of small ruminants with this standard by linking bedding changes to the animal's health per N.J.A.C. 2:8-6.4(f). It states that bedding or matting shall provide an environment suited for small ruminant health. The environment should be assessed by all of the standards which address animal health.

N.J.A.C. 2:8-6.4(g)

COMMENT: N.J.A.C. 2:8-6.4(g) should be amended to limit usage of ties to medical treatment purposes while still providing the animal the ability to turn around, and permitting full, unimpeded lateral recumbancy. The rule should mandate that the animal be provided continuous access to a plentiful source of varied, nutritious feed and continuous access to a plentiful supply of clean water.

RESPONSE: The Department declines to limit use of halters or neckbands to medical procedures. Farmers may employ such tethers to prevent harm to the animal or the handler or, for example, to provide for adequate pasture management. The rule mandates that feed and water be available if the animals are tied for more than 12 hours. The Department notes that this section must be reviewed in context of the full regulatory scheme, which uses a holistic approach to determine animal welfare.

N.J.A.C. 2:8-6.5(a)

COMMENT: This provision should mandate appropriate humane training for all transporters in accordance with proposed N.J.A.C. 2:8-8.1(b)1i.

RESPONSE: The rule's requirements for transportation of animals apply to transporters who must comply with those requirements. The Department expects persons responsible for transport to have basic knowledge of animal behavior. If training is necessary, the Department will facilitate such training but declines to mandate it.

COMMENT: The provision should make clear that the owner of the animals is also responsible for the welfare of the animals at all times, including transport.

RESPONSE: The rule states that the driver of the transport vehicle and/or the person who is present in the vehicle for purposes of transporting the cattle shall be responsible for the welfare of the animals at all times during transport. This is consistent with the European Union, Canada and other countries. Owners are expected to select transporters who have appropriate knowledge of animal welfare and who will comply with the Department's regulations. Because owners have an interest in the well being of their animals during transport, they will take appropriate steps for the animals' welfare. The Department does not believe the suggested change is necessary.

N.J.A.C. 2:8-6.5(b)

COMMENT: Commenters assert that the language "minimizes injury, illness and death" is vague and does not give producers or enforcement officials guidance to determine satisfactory outcomes.

RESPONSE: The rule specifically requires that handling and transporting be undertaken to minimize adverse affects on animals. Transporters or owners are expected to have basic knowledge of animal behavior and should identify

conditions that are hazardous to animal health. The Department will facilitate training as necessary. The Department believes that itemizing events or conditions that would minimize adverse events is a nearly impossible task given the various situations that arise during transport. The rule's use of the term minimize, whose commonly understood meaning is "to reduce or to keep to a minimum" (Webster's New Encyclopedic Dictionary, Merriam-Webster, Inc., 2002) advises both owners and enforcement officials of the obligations imposed by the rules.

COMMENT: N.J.A.C. 2:8-6.5(b) does not cover time in transport or ventilation.

RESPONSE: The Department notes that while not specifically in N.J.A.C. 2:8-6.5(b), ventilation and time in transport are covered in the rules. See N.J.A.C. 2:8-6.5(d) and 6.7(a)2 and 3.

COMMENT: Provisions should also be made concerning loading ramp grade degree as well as non-slip flooring on loading ramps and alley floors to prevent other possible injuries.

RESPONSE: N.J.A.C. 2:8-6.5(b) requires that small ruminants transported for any purpose must be handled (loaded and off-loaded) and transported in a manner that minimizes injury, illness and death. The Department has adopted the Livestock Trucking Guide by Temple Grandin for the National Institute for Animal Agriculture for loading and trucking space requirements. This requirement addresses issues such as ramps and flooring. The Department, therefore, declines to require specific grade levels or flooring materials.

Comments: Standards for loading and unloading of sheep and goats used in Europe should be applied in New Jersey.

RESPONSE: The intent of the European standards and the proposed rule are aligned, as they require animals to be moved and handled in order to protect the animals from unnecessary, pain, distress and injury. N.J.A.C. 2:8-6.5(b) requires that small ruminants transported for any purpose must be handled (loaded and off-loaded) and transported in a manner that minimizes injury, illness and death. The rule sets an appropriate standard.

N.J.A.C. 2:8-6.5(c)

COMMENT: Commenter asserts that the term “minimal delay” should be defined or that specific times should be mandated pertaining to loading and unloading with adequate stops for rest and water. The number of animals being transported must be considered.

RESPONSE: The term “minimal delay” when read in conjunction with the remainder of the rule, provides sufficient guidance. The Department notes that given the variables in transportation (weather, vehicle breakdowns, etc.), it is neither practical nor desirable to define the term with more specificity. While the number of animals may impact times for loading and unloading, the Department notes its rules for minimizing delay, illness or injury will apply, as well as the space requirements set forth in the Livestock Trucking Guide.

COMMENT: Commenter states sheep should not be transported for more than 12 hours as they become hungry after about 12 hours.

RESPONSE: Animals are required to be transported with minimal delay. Federal statute sets forth a rule regarding transport of livestock, 49 USC § 80502, permits transportation of sheep without unloading for 28 hours, with an additional eight

hours if the 28-hour period ends at night. The Department's rule follows Federal requirements.

N.J.A.C. 2:8-6.5(d)

COMMENT: The phrase "adequate ventilation" - an additional requirement for animals during transport - should be clarified.

RESPONSE: The term "adequate ventilation" must be read in context of the complete rule, which requires consideration of an animal's size, breed, age, physiologic condition, etc.; requires transport in a manner that minimizes injury, illness and death, and relief from the elements and requires adequate ventilation. The rule provides appropriate guidance for transporters and enforcement officials.

N.J.A.C. 2:8-6.5(e)

COMMENT: Remove the statement "detrimental to the animal's health" after hyperthermia or hypothermia. Hyperthermia and hypothermia are never comfortable conditions and animals in hyperthermic or hypothermic conditions must be provided relief immediately.

RESPONSE: By definition, hypothermia is a body temperature below what is normal for that species and hyperthermia is a body temperature above what is normal for that species. (As noted, and for the reasons set forth above, the Department is proposing an amendment to the definition of hyperthermia elsewhere in this issue of the New Jersey Register.) Slight changes in body temperature may not be detrimental. Where such change is detrimental, failure to provide relief would violate the rule.

COMMENT: The proposed rule is too vague, and guidance must be provided on the warning signs (for example, hazardous body temperatures) that might indicate the onset of the conditions “hypothermia” or “hyperthermia.”

RESPONSE: Hyperthermia and hypothermia are actual conditions which may impact an animal’s health if the variation in body temperature is significant. Physical examination of the animal with manifestations of hyperthermia and hypothermia such as changes in heart rate, respiration rate, body temperature changes, etc., may demonstrate these conditions. The Department will facilitate training that will assist people in identifying the clinical parameters as necessary.

N.J.A.C. 2:8-6.5(f)

COMMENT: This section says that the animals must be able to cush during transport but requiring them to remain in this position without the ability to stretch, move and be able to lie down comfortably in order for the transport is inhumane.

RESPONSE: N.J.A.C. 2:8-6.5(f) states, “Small ruminants shall be grouped according to size in the vehicle, and be able to stand or cush in normal posture within the vehicle.” The rule contemplates that animals should be able to assume either posture. Cushing is the preferred position for camelids. The Department has adopted the Livestock Trucking Guide which provides further guidance on this issue.

N.J.A.C. 2:8-6.5(g)

COMMENT: The standard permits excessive withholding of food and water both prior to and during transport.

RESPONSE: N.J.A.C. 2:8-6.5(g)1 specifically states the 24-hour time without feed is the maximum time and is not in addition to transport time. Federal law permits 28 hours without food and water during transport. The Department has incorporated the Federal rules regarding transportation of animals.

COMMENT: The language in N.J.A.C. 2:8-6.5(g) stating that food and water must be provided for animals not moved from an auction barn, suggests that animals moved from an auction barn need not have access to food and water in accordance with 9 C.F.R. §313.2(e).

RESPONSE: The Department does not agree that the rule suggests any limitation or removal of feed and water. This section speaks to animals who remain in an auction barn, transfer station or similar location. Access to feed and water for small ruminants is governed in N.J.A.C. 2:8-6.2 and 6.3.

COMMENT: Delete “and water” in N.J.A.C. 2:8-6.5(g)1 as it is error and contradicts the Federal rule.

RESPONSE: The commenter is correct that paragraph (g)1 erroneously included water. On adoption, “and water” has been deleted. This is not a substantive change requiring proposal, as the Federal regulation requires access to water.

COMMENT: “Small ruminants” is more broadly defined under the proposed rule than in Federal regulations (that is, only the small ruminant species of sheep and goats are included in the Federal definition of “livestock”); therefore, references

to 9 C.F.R. §313.1(c) and §313.2(d) and (e) should probably be replaced with appropriate descriptive language.

RESPONSE: The commenter is correct that the Department's definition of small ruminants is more expansive than that in the Federal regulations. All small ruminants, including llama, alpaca and farm raised Cervidae, must be provided with feed and water as per the requirements of 9 C.F.R. §313.2(e). The Department believes its rule is appropriate as all parties were on notice that the requirements of 9 C.F.R. §313 are applicable.

COMMENT: Add this section stating: "All people (handlers, transporters, on farm personnel, etc.) that have contact with animals must be trained in animal behavior and humane handling techniques."

RESPONSE: The Department does not believe that this subsection should be amended to require training. Owners and transporters are responsible for the welfare of animals. As noted above, the Department attributes baseline knowledge of animal behavior and health to those individuals. The Department will facilitate training in such techniques to enhance that knowledge.

N.J.A.C. 2.8-6.5(g)1

COMMENT: Commenter suggests deletion of N.J.A.C. 2:8-6.5(g)1.

RESPONSE: The Department disagrees and believes this paragraph is appropriate to protect animal health. The Department notes that on adoption the words "and water," which were proposed in error, have been deleted to conform to 9 C.F.R. §313.2 (e).

N.J.A.C. 2:8-6.6

COMMENT: Electric prods shall never be used, and herding dogs, ATVs, and horses should be controlled to allow judicious and slow movement of the flock.

RESPONSE: The types of handling techniques cited by the commenter are routine husbandry practices required to be used by knowledgeable individuals in a way to minimize pain. The Department declines to prohibit the use of electric prods as, when used properly and judiciously, they are a tool for animal handling. The Department agrees handling techniques should be employed in a manner that minimizes injury to the flock or herd.

COMMENT: Commenter suggests setting specific time frame for weaning lambs.

RESPONSE: The Department requires that animals have access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition. Lambs may be provided with adequate feed through means other than nursing.

COMMENT: Lambs shall never be given any form of growth-promoting hormones, steroids, or other artificial growth promotents. The routine use of sub-therapeutic antibiotics or feed additives to prevent coccidiosis should be prohibited. Should a lamb become sick or injured and require an antibiotic or other form of medication, that lamb should be treated individually.

RESPONSE: FDA regulates use of medications for food animals and USDA regulates biologics. The Department declines to adopt specific regulations relating to use of medications and biologics but notes that owners may choose not to

provide those substances to their animals. Where an animal is sick or injured, the rule requires that it be promptly treated or humanely euthanized.

N.J.A.C. 2:8-6.6(a)

COMMENT: The regulations should explicitly require veterinary care for animals who are sick or injured within a stated period of time and that such care should return the animal to full health. In the event the animals do not recover, they should be taken out of the production cycle to recover or humanely euthanized.

RESPONSE: The rule states: “sick or injured small ruminants shall be promptly treated or humanely euthanized” (N.J.A.C. 2:8-6.6(a)) and “proper medical care for the diagnosis or management of injury or disease must be provided to sick or injured animals” N.J.A.C. 2:8-6.6(c). The regulation, consistent with N.J.S.A. 45:15-8.1, permits owners to administer to the ills and injuries of their own animals. N.J.A.C. 2:8-6.6(c)1. While there are occasions when veterinary care will be necessary, the Department declines to identify specific circumstances under which such care is mandated due to the broad spectrum of illnesses and injuries and the varying capabilities of owners to treat such illnesses or injuries.

COMMENT: Proposed N.J.A.C. 2:8-6.6(a) should prevent the transport, marketing and slaughter of downed animals. They should be treated or humanely euthanized.

RESPONSE: The regulation states that sick or injured small ruminants must be promptly treated or humanely euthanized. The Department notes that small ruminants may need to be transported to receive treatment and at times will need

to leave the farm to be euthanized. The rule permits slaughter of downed animals. (N.J.A.C. 2:8-6.6(a)3v). The Department will not limit the option of the owner to choose among treatment, euthanasia or slaughter.

COMMENT: Revise to “Sick or injured small ruminants must be promptly treated or if recovery is not realistic humanely euthanized.”

RESPONSE: An owner has discretion with his animal after injury to determine whether to treat or to euthanize. The Department will not require treatment in all cases where recovery is possible, but requires that the animal be treated humanely and is euthanized by a knowledgeable individual who is skilled in the method used.

N.J.A.C. 2.8-6.6(a)3ii

COMMENT: Delete from N.J.A.C. 2:8-6.6(a)3ii, “while conscious, except when necessary to provide life-saving treatment, although a small ruminant in a state of equivalent with one of surgical anesthesia may be dragged.”

RESPONSE: The commenter seeks to prohibit dragging of an animal. The rule is appropriate as there may be occasions when dragging may be necessary to save an animal’s life or prevent injury. The Department notes that the rule requires that the animal be handled humanely at all times, even if it is to be slaughtered or euthanized, so as not to cause unnecessary pain or injury.

N.J.A.C. 2.8-6.6(a)3iii

COMMENT: In the section requiring disabled small ruminants to be moved as safely as possible, delete “in order to minimize injury to the animal and handler.”

RESPONSE: The rule is appropriate. It addresses animal health as well as human health. The Department declines to make the change.

N.J.A.C. 2:8-6.6(a)3iv

COMMENT: The proposed rule should define medical care more clearly and require that medical care be designed to alleviate suffering. Moreover, the word “survive” should be replaced with “recover and regain their ability to stand and walk.”

RESPONSE: Medical care for the management of illness or injury means that treatment or supportive care will be provided as indicated by the animal’s presenting condition. Such medical care may in fact alleviate or ameliorate pain. The Department declines to substitute “recover and regain ability to stand and walk” because it believes that appropriate treatment should be provided (where an owner chooses to attempt treatment) for those animals which could survive, regardless of whether the animal could regain its mobility.

COMMENT: Many states and the European Union have determined that failing to provide adequate veterinary care to an animal is cruel, inhumane and illegal. Medical care should be mandated for animals that are expected to survive.

RESPONSE: The regulations provide for adequate veterinary care. N.J.A.C. 2:8-6.6a requires that all sick or injured small ruminants must be promptly treated or humanely euthanized. Also, proper medical care for the diagnosis or management of injury or disease must be provided to sick, injured, or non-ambulatory disabled small ruminants N.J.A.C. 2:8-6.6(c). An owner has discretion with his animal

after injury to determine whether to treat or to euthanize. The Department will not require treatment in all cases where recovery is possible.

N.J.A.C. 2:8-6.6(a)3v

COMMENT: Delete “even if they are to be slaughtered or euthanized.”

RESPONSE: The Department’s rule as a whole requires that animals be treated humanely at all times. The particular provision cited by the commenter, which applies to non-ambulatory disabled small ruminants, recognizes that the handling requirements apply in instances where the animal is to be slaughtered or euthanized as well as instances where the animal will be treated.

N.J.A.C. 2:8-6.6(b)

COMMENT: The rule that sick, injured and dead animals must be removed from contact with live animals within 24 hours is too permissive. The time frame should be reduced, for example, where a carcass poses a health risk to other animals.

RESPONSE: Depending on the environment, some animals are checked once a day during feeding time. Moreover producers may not know the precise time of death. The 24-hour time frame, which is the maximum time frame, will ensure prompt removal. This is a reasonable time frame. The Department notes further that owners will likely be aware of conditions of their animals and that they are required to ensure sick or injured animals are treated or humanely euthanized.

N.J.A.C. 2:8-6.6(d)

COMMENT: Commenters assert that the term “routine husbandry practices” is vague, fails to consider whether the practices are humane, and should be deleted.

RESPONSE: The Department, after review of comments received, has determined that its definition of routine husbandry practices needs clarification. Simultaneously with this adoption, the Department will propose amendments to the definition of “routine husbandry practices,” in a notice of proposal published elsewhere in this issue of the New Jersey Register, to refer to techniques commonly taught by veterinary schools, land grant colleges, and agricultural extension agents for the benefit of animals, the livestock industry, animal handlers and the public health and are employed to raise, keep, care, treat, market and transport livestock. The benefits to the animal, the need for specific training (for example, a veterinarian) and humaneness of the practice are core components of the methods taught by those institutions. In the interim, the rule, which requires that knowledgeable individuals perform the procedures, given the age, breed, physiologic condition, etc., in a way to minimize pain, is appropriate.

COMMENT: Delete current text and replace with “De-horning or dis-budding, removing extra teats, tail docking, tattooing, hot iron branding, face branding and other routine husbandry practices are prohibited.”

RESPONSE: The Department’s regulation specifically allows these practices when performed by knowledgeable individuals in a sanitary manner and in a way to minimize pain. These procedures, which are taught at veterinary schools, land grant colleges, and by agricultural extensions, when performed as required by regulation do not constitute inhumane treatment. Dehorning and disbudding are

husbandry practices routinely taught at veterinary schools, land grant colleges and agricultural extensions. They are done for the welfare and safety of animals and their human handlers (horns may cause animal to become entangled or may injure other animals). Teat removal is another routine husbandry practice that removes non-functional extra teats with no underlying mammary tissue. Extra teats are removed because they are susceptible to introduction of bacterial and other agents and to prevent non-productive suckling. Tail docking is recommended in sheep to prevent infestation from insects and secondary bacterial infections and other infections. Additionally, as stated in the American Veterinary Medical Association policy on animal welfare, the Department agrees that permanent identification of animals is essential in protecting the nation's livestock industry and public health. Tattooing provides a means to identify livestock. The Department notes that branding would be considered a routine husbandry practice and must be performed by a knowledgeable individual, in a sanitary manner and in a way to minimize pain. Branding or marking is required for the sale or movement of livestock in certain states. Appropriate methods and procedures are taught in veterinary schools, land grant colleges, and agricultural extension agents. While face branding had previously been contemplated by the federal government to identify diseased sheep and goats, that practice is no longer pursued. Face branding is not taught as a routine husbandry practice and as such would not be contemplated by these regulations. The Department notes that further studies in this area are ongoing and that the AVMA recommends that high priority be given to the development of alternatives to hot-iron branding.

COMMENT: The regulations should not provide a blanket allowance for routine husbandry practices, which may be illegal when performed on horses and other animals, based solely on their historic use and without any consideration of whether they are humane.

RESPONSE: The rule does not sanction illegal practices. The rules allow for certain specific practices which, as amended, are commonly taught by veterinary schools, land grant colleges, and agricultural extension agents, for the benefit of animals, the livestock industry, animal handlers and the public health and are employed to raise, keep, care, treat, market and transport livestock. Moreover, the very text of the regulation (minimize pain) demonstrates that the prevention of inhumane treatment was considered and required by the Department.

N.J.A.C. 2:8-6.7

COMMENT: Delete this entire section. No exceptions shall be allowed.

RESPONSE: The exceptions are appropriate. The Department does not believe N.J.A.C. 2:8-6.7, which permits an exception for animals under the direct care of a veterinarian who can provide a medically supportable written explanation for the condition, should be deleted. The Department notes that veterinarians are licensed by the State Board of Veterinary Medical Examiners and must treat animals within the standard of care in this State and comply with the ethics, standards and laws set forth in N.J.S.A. 45:16-1 et seq. and N.J.A.C. 13:44-1 et seq. The Department believes it is appropriate where an animal is under the care of a professional to defer to the veterinarian's professional judgment. The second exception mirrors federal law for transportation of animals and the Department

believes this is appropriate. The third exception erroneously included the words “and water” in the proposal. 9 C.F.R. Part 313.2 requires that animals that are held in pens have access to water and if held longer than 24 hours, access to food. The Department has corrected the error on adoption. Because the proposal referenced the Federal rule, the Department believes the change does not require reproposal. The fourth exception allowing sheep to be confined an additional eight hours when the 28-hour period ends at night is appropriate because it mirrors Federal law and the Department declines to make its rules more stringent than those promulgated by the Federal government.

N.J.A.C. 2:8-6.7(a)2 and 3

COMMENT: New Jersey should not rely on an archaic provision of the U.S. Code (49 U.S.C. §80502) in promulgating regulations relating to transport in 2003, but should promulgate its own regulations relating to the humane transport of farmed animals based on modern science.

RESPONSE: The Department has reviewed scientific resources and has consulted with the New Jersey Agricultural Extension Station regarding transportation of small ruminants and has determined that these rules will not result in inhumane treatment of the animals. Moreover, by adopting the standards set forth by the Federal government related to transportation of animals, the Department will avoid challenge to its rules on placing an improper burden on interstate commerce.

COMMENT: The proposed standards would allow animals to be held in a pen or cage without food for 24 hours followed by 28 hours without either food or water.

This is excessive. Sheep may be confined for an additional eight consecutive hours when the 28-hour period of confinement ends at night and all animals may be confined for 36 consecutive hours upon the request of the owner or person having custody of the animals. This is excessive.

RESPONSE: The Department does not agree that the rule permits the 24-hour period to run consecutively with the 28-hour period without sheep having access to feed or water. Animals may be transported for up to 28 hours. In holding pens, animals must have access to water, and if held longer than 24 hours, access to feed. The Department's rule refers to the Federal requirements for feed and water during transport and holding upon arrival at the destination. The Department will not promulgate a rule that contradicts the Federal law in this area.

COMMENT: In addition, the USDA has determined that 49 U.S.C. §80502 and its regulations were written to apply only to transfer by a railcar and that the Twenty-Eight Hour Law does not apply to transport by trucks. At a minimum, the regulations should specify that "vehicle or vessel" include trucks.

RESPONSE: The Twenty-Eight Hour Law, 49 U.S.C. §80502, applies to transport by truck. The law was amended in 1994 to include commercial transport by truck. As such, no change is necessary.

Swine (Subchapter 7)

N.J.A.C. 2:8-7.1(a)1

COMMENT: Regulations about the welfare of domestic livestock should be based on science. If not, public confidence in the regulatory structure will be eroded.

RESPONSE: The Department agrees that the standards must be science based and notes that the Legislature directed the Board of Agriculture and the Department to develop these standards in consultation with the New Jersey Agricultural Experiment Station. The Department reviewed over 400 references throughout the development of the rules and has reviewed the materials provided by the commenters. The rules were developed based on the best, objective, scientific analysis as recommended and approved by the development committees, which were composed of representatives from NJSPCA, veterinarians, academicians, extension agents, producers, allied industry and Department staff. The Department's standards fulfill its statutory mandate to create humane standards while acknowledging agricultural production practices, including those taught by veterinary schools, land grant colleges and agricultural extension agents for the benefit of the animal, the herd or flock, handlers and the public.

COMMENT: Addressing animal welfare in isolation without consideration of animal health, food safety, and the environment is not wise and will lead to unintended consequences.

RESPONSE: Although the issues of food safety and the environment are overseen by other State and Federal agencies, by requiring the animals to be evaluated in a holistic manner, these factors will be considered.

COMMENT: “Production level/stage of development of the animal” should be deleted; while some of the principles listed in this section are appropriate in determining swine welfare, others “suggest that welfare is captive to economic concerns and production goals. For example, an animal’s well being could be negatively impacted by its production level.”

RESPONSE: The Department disagrees with the comment. The rule’s reference to “production level/stage of development of the animal” is one of the factors to be considered in determining whether the rule’s standards have been met. Given that the rules govern swine raised for production, its inclusion here is both necessary and appropriate. The Department believes these rules reflect its responsibility to promote animal safety, health and well being while simultaneously fostering industry security, sustainability and growth. The Department has written the standards to meet those complementary objectives. Production is enhanced by humane treatment. In order to provide standards for humane treatment, the Department has relied heavily on expert scientific and medical opinion.

COMMENT: The proposed standards require that the health of each animal be assessed individually. This is necessary and beneficial as long as the intent is to protect the animals and is not used to excuse unacceptable body condition scores or detrimental feeding and watering practices. Unfortunately, the proposed standards render this requirement meaningless by permitting body condition scores and feeding and watering practices wholly insufficient to ensure animal health.

RESPONSE: Pursuant to N.J.A.C. 2:8-7.1(a)1, all determinations as to whether the standards for swine have been met shall take into account age, breed, type, physiologic condition, size, production level, stage of development, daily maintenance requirements necessary for that particular animal and environmental conditions. The standard requires each animal to be assessed individually and compliance may not be determined by averaging the treatment or condition of the herd or group. Under the feeding provision, N.J.A.C. 2:8-7.2(a)1, each swine must have daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition. Pursuant to N.J.A.C. 2:8-7.3, each swine shall have daily access to water in sufficient quality and quantity to satisfy the animal's physiologic needs as evidenced by its hydration status. The rule's reference to Body Condition Score, as discussed more fully below in response to specific Comments, is one factor that will be used to ensure the Department's standards are met. The rules provide appropriate standards and the Department disagrees that its rules are wholly insufficient to ensure animal health.

N.J.A.C. 2:8-7.2(a)

COMMENT: The rule should require that "[e]ach animal must be observed at least once a day in order to properly monitor and ensure welfare," as required by certain European Union regulations.

RESPONSE: The Department disagrees that this language is necessary. The Department expects animals to be maintained properly at all times, but recognizes that all animals do not necessarily need to be observed every day. In fact there may be times where the animal may need to be inspected more than once per day

to meet that particular animal's needs. It would be administratively impossible to determine whether each animal was observed at least once per day. Therefore, the Department has required that each animal be assessed individually to ensure maintaining an adequate body condition. The Department notes that farmers will be routinely in animals' presence when feeding and watering and providing other care, and that sick or injured swine must be promptly treated or humanely euthanized.

COMMENT: Commenters cite to feeding practices where sows are fed every second day or third day, which practice minimizes fighting; they state daily access to feed is not necessary to maintain health and production status.

RESPONSE: The rule requiring daily access to feed is appropriate and swine unable to maintain a BCS which meets the minimum score set forth in the regulation due to group feeding practices must be fed in a manner that allows the swine to maintain an adequate body condition. Under these rules, owners must provide swine daily access to feed and water. If a producer wishes to be excused from this requirement, he would be required to demonstrate that the swine are under the direct care of a veterinarian who can provide a medically supportable written explanation for the practice. N.J.A.C. 2:8-7.7(a)1.

N.J.A.C. 2:8-7.2(a)1

COMMENT: The regulations should not allow swine BCS to fall below minimum levels for an unspecified, "reasonable" time.

RESPONSE: The variability of the conditions and the environments in which animals are raised require a case-by-case determination of the amount of time

needed to reverse a condition which may cause an animal's BCS to fall below 2.0. As such, the Department will not require specific time frames. The rules mandate that management practices must be altered and "diligent" efforts must be used to restore the body condition. (N.J.A.C. 2:8-7.2(c)1). The Department believes this approach is reasonable.

COMMENT: The proposed standards allow swine to be maintained at an unacceptably low level while on the farm.

RESPONSE: BCS systems were designed for use in a production environment, not as humane standards or guidelines. Nonetheless, body condition scores are helpful when used with other measurements to determine neglect or abuse. The regulations use BCS as one of a number of factors in assessing inhumane or cruel treatment. A low score, by itself, does not necessarily indicate neglect or abuse. Low body condition scores may be an indication of old age, lameness, disease, etc. Low scores may call for immediate attention, but in numerous cases do not indicate abuse. The rule requires that when BCS falls below 2.0, management practices are to be altered to improve its condition. As discussed more fully below, an owner may choose not to attempt to restore the swine's body condition and to send the animal to slaughter. The Department is proposing, in a notice of proposal published elsewhere in this issue of the New Jersey Register, an amendment to N.J.A.C. 2:8-7.2(c)1i to reflect that swine with a BCS of 1.0 be sent to slaughter and not to livestock markets.

COMMENT: The regulation should include a new section that states: "The use of antibiotics and hormones to control and mask disease or maintain or promote

growth are prohibited. Animals will not be fed any animal products or by-products.”

RESPONSE: The inclusion of antibiotics and hormones in feed as well as the inclusion of animal products/byproducts is regulated by the Food and Drug Administration. The Department will permit owners to use feed and medications consistent with Federal law. The Department notes that sick animals must be promptly treated.

COMMENT: The proposed regulations must require that all pigs are fed twice a day with a diet appropriate to their age, weight, behavioral and physiological needs.

RESPONSE: As required by N.J.A.C. 2:8-7.1(a)1, all determinations as to whether these standards for swine in regards to feeding have been met shall take into account age, breed, type, physiologic condition, size, production level, stage of development, daily maintenance requirements necessary for that particular animal and environmental conditions. For example, under the feeding provision, N.J.A.C. 2:8-7.2(a)1, each swine must have daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition. This may require some animals to be fed more than once a day. If an animal does not maintain an adequate body condition, feeding schedules or methods should be modified. The rule addresses the commenter’s concerns.

COMMENT: The proposed regulations should address the difference between fattening pigs and breeding pigs with regard to their feed.

RESPONSE: The regulation requires that owners consider specific age, breed, type, physiologic condition, size, production level, stage of development, and daily maintenance requirements necessary for that particular animal and environmental conditions for each standard, including feeding. In addition, the rules require that each animal be assessed individually. The rule addresses the commenter's concerns and the Department does not agree that specific diets for various breeds are necessary in these rules.

N.J.A.C. 2:8-7.2(b)

COMMENT: The wording should not be BCS as that is body condition score and a weight is not a score. Body condition would be more appropriate in this context.

RESPONSE: The Department notes the error and agrees. On adoption, the regulation has been clarified to refer to "body condition" not "BCS."

COMMENT: Commenter objects to the use of weight alone to establish body condition and acknowledges that consideration must be given to age, breed, etc.

RESPONSE: The Department agrees and notes that its regulation requires that age, breed, type, physiologic condition, size, production level, stage of development must be taken into account to assess any of the standards (N.J.A.C. 2:8-7.2(a)1). This, combined with weighing the animal as allowed in N.J.A.C. 2:8-7.2(b)1, provides an appropriate method to assess body condition.

N.J.A.C. 2:8-7.2(c)

COMMENT: Commenter expressed the following concern: It is not unusual to see sows with a BCS 1 due to chronic "non-fatal" gastric ulceration. It is

impossible to get these sows to put on weight. Many times producers will keep these sows through farrowing without ill effects. Once farrowing is complete the pigs are cross fostered to other sows. The sow is then "dried off" and sold. This may take some time but is a reasonable approach because there are minimal ill effects to the sow. The proposed regulation appears to suggest that these sows should marketed or euthanized expeditiously. It would be better if the regulation allowed management to rectify the matter within reason.

RESPONSE: The rule provides for the situation described, but requires a producer to alter the management of that sow to improve her condition within a reasonable period of time (N.J.A.C. 2:8-7.2(c)).

COMMENT: Commenters state the section should not permit swine to have a BCS of less than 2; commenter suggests requirement that sows maintain a BCS of at least 2.5.

RESPONSE: Under the species specifications, the rules state that each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of adequate body condition. In addition, the rules require that each animal be assessed individually. The rules require that where an animal's body condition falls below 2.0, management practices must be altered and "diligent" efforts must be used to restore the body condition.

BCS systems were designed for use in a production environment and were not meant to provide stand-alone humane standards or guidelines. Body condition scores should be used along with other measurements in determining presence of neglect or abuse. The intent of the regulations was to use BCS as one of a number

of factors in assessing inhumane or cruel treatment. A low score, by itself, is not necessarily indicative of neglect or abuse (for example, low body condition scores may be an indication of severely worn teeth due to old age, lameness, disease, or providing nutrition for large litters, etc. Low scores may call for immediate attention, but in numerous cases do not indicate abuse). The Department has adopted the BCS swine guidelines described by Coffey and Parker at the University of Kentucky, College of Agriculture Cooperative Extension Service. According to those guidelines on assessing sow body condition, body condition scoring on a scale of 1 to 5 is an estimation of the fat stores of a sow. A sow with a BCS of 2 would be considered thin, 3 ideal, and 4 fat.

The guidelines do not indicate that a BCS score of 2 is inherently unhealthy and inhumane any more than a score of 4 is inhumane. The Department does not find that a BCS score of less than 2.5 is, taken alone, an indicator of inhumane treatment. The Department declines to adopt a BCS of 2.5 for sows.

N.J.A.C. 2:8-7.2(c)1

COMMENT: Delete the section that defines “reasonable period of time.”

RESPONSE: The Department declines to remove this paragraph as it is essential to establish time parameters for restoring body condition. The rule requires owners to use diligent efforts to restore an animal to an acceptable body condition.

N.J.A.C. 2:8-7.2(c)1i

COMMENT: Proposed N.J.A.C. 2:8-7.2(c)1i allows the transportation and marketing of animals with a BCS of 1.0, including animals classified as “emaciated.” Commenters oppose this provision and urge the Department to prohibit the transport of animals with BCS scores below the minimums suggested above.

RESPONSE: The Department proposed a BCS of 1.0 at market in recognition that there may be times, for reasons appropriate to the stage of production or development of the animal, that a BCS may fall below 2.0 and, rather than differently manage the animal, it is necessary to transport the animal for slaughter. After reviewing the comments, the Department believes that the potential for misinterpretation - that is, that the Department condoned a body score of 1.0 - is significant and as such will not adopt N.J.A.C. 2:8-7.2(c)1i. The Department will propose a new N.J.A.C. 2:8-7.6(a)3vi simultaneously elsewhere in this issue of the New Jersey Register to clarify that swine with a body condition score of 1.0 may be transported to slaughter but not to a livestock auction.

N.J.A.C. 2:8-7.2(d)

COMMENT: No mention is made in the proposed standards of the need for each animal to have sufficient room while eating in order to prevent conflict.

RESPONSE: The Department has not mandated specific space requirements for feeding areas. The rules require daily access to sufficient and nutritious feed to maintain an adequate body condition and, if group feeding practices cause an animal to fail to maintain an adequate body condition, that animal must be fed in a manner that will allow it to maintain an adequate body condition.

COMMENT: Delete the section requiring a different manner of feeding where swine are unable to maintain minimum BCS due to group feeding practices.

RESPONSE: As required by N.J.A.C. 2:8-7.2(c) and 7.2(c)1, diligent efforts must be made to restore an animal to an acceptable body condition. This section requires a different manner of feeding where the animal's body condition falls below minimum due to group feeding. The Department declines to remove this subsection, as deleting it could be detrimental to an animal's health.

N.J.A.C. 2:8-7.3(a)

COMMENT: The practice of withholding adequate water from animals has been deemed cruel and illegal in states, the European Union and Canada and should not be endorsed in the draft regulations. Swine should have unlimited access to fresh drinking water.

RESPONSE: The Department agrees that withholding sufficient quantities of water to support the swine's physiological needs would be inhumane and has required that swine have daily access to water and sufficient quantity and quality to satisfy the animal's physiological needs as evidenced the animal's hydration status. Owners may select watering systems that provide continuous or limited access to water as long as the standard in this rule is met.

N.J.A.C. 2:8-7.3(a)1

COMMENT: Rules should define how and when hydration status is measured. Hydration status can be estimated in a number of ways, but the only one readily available to caretakers, animal control officers, or livestock investigators is

physical examination, which requires knowledge, is partly subjective, and will not detect mild dehydration. Standards should establish a minimum frequency of watering and amount per body weight. National Research Council guidelines can be used to establish appropriate minimums.

RESPONSE: The Department agrees that physical examination will often be the way in which hydration status is assessed. The Department will facilitate training for persons who will make such assessments. Use of medical criteria will minimize the subjective calls made by the inspector. The Department notes that a veterinarian may be employed to provide a definitive diagnosis regarding adequate hydration status. Owners are free to use NCR guidelines to determine watering schedules.

N.J.A.C. 2:8-7.4(a)

COMMENT: Remove the statement “detrimental to the animal’s health” after hyperthermia or hypothermia. Hyperthermia and hypothermia are always undesirable for both the animal’s health and welfare.

RESPONSE: By definition, hypothermia is a body temperature below what is normal for that species and hyperthermia is a body temperature above what is normal for that species. (As noted, and for the reasons set forth above, the Department is proposing an amendment to the definition of hyperthermia elsewhere in this issue of the New Jersey Register.) There are circumstances which may result in temporary slight changes in body temperature but which are not detrimental to the animal’s health such as exercise. The modifying term is necessary and appropriate.

COMMENT: The proposed standard requiring that each of the covered species be given “relief from the elements...that result in detrimental hyperthermia or hypothermia” is too vague. Guidance must be provided on the warning signs that might indicate the onset of these conditions.

RESPONSE: The Department expects persons responsible for the care and keeping of animals as well as those charged with enforcing these standards should have general knowledge of animal behavior and species characteristics. The Department stands ready to facilitate training that will enable people to identify the clinical parameters that would indicate hyperthermia or hypothermia. Given variable in species, age, breed, production level, environments, the Department declines to codify such guidelines.

N.J.A.C. 2:8-7.4(b)

COMMENT: Although proposed N.J.A.C. 2:8-7.4(b) suggests that natural features in the environment including “trees, land windbreaks...may provide shelter from the elements,” the regulations should require that swine be provided with shelter that keeps them dry and out of the wind during inclement weather and extreme temperatures.

RESPONSE: The proposed regulations require that the swine be provided an environment that provides relief from the elements such as excessive wind, temperature and precipitation whether with natural features or with constructed shelters. The rules provide an appropriate standard and the Department declines to make the suggested change.

COMMENT: This section fails to address extreme hot and cold weather relief for swine. Moreover there are no engineering standards provided that would define what constitutes a shelter, which should include roof, sides, and address debris and waste.

RESPONSE: The animal's environment must provide relief from the elements including excessive temperatures (N.J.A.C. 2:8-7.4(a)). The rules regarding natural features and constructed shelters provide adequate standards to provide such relief. For example, natural features include trees, land windbreaks, overhangs or natural weather barriers. Constructed shelters must provide an environment that supports swine health, be structurally sound, have a safe interior surface reasonably free from injurious matter, and have natural or mechanical ventilation to provide air quality and to maintain an environment suitable for animals. The standards provide adequate guidance for constructing a facility. Further information on swine housing systems is available from various sources including veterinary schools and land grant colleges.

COMMENT: The regulation should require that swine have comfortable dry bedding material and adequate space to turn around and lie with their legs fully out stretched.

RESPONSE: Constructed shelters must be of sufficient size to provide adequate space for each animal seeking shelter within to stand, lie down, rest, get up, move its head freely and have natural or mechanical ventilation to provide air quality and maintain an environment suitable for the animals. The rules do not require space to enable the animal to turn around, although owners may provide such

space if they choose. N.J.A.C. 2:8-7.4(d) requires constructed floor surfaces on which swine are kept must provide footing that minimizes injury to swine. Bedding or matting could be used, but must provide an environment that supports animal health and minimizes injury to swine. The Department will not require that bedding material be utilized as there are natural environments, such as pastures, where this is not necessary nor practical. The Department declines to make the suggested changes as the standard as currently written provides for humane treatment of animals.

COMMENT: The rule should provide that outdoor facilities be held to the same standards for size, soundness, safety, and environment as constructed shelters.

RESPONSE: The rule requires that the natural environment provide relief from the elements and refers to trees, land windbreaks, overhangs and other natural weather barriers. It also requires that in enclosed yards, “sharp objects or debris that pose an actual threat to the swine’s health shall be minimized to reduce the risk of injury to swine.” N.J.A.C. 2:8-7.4(c). Outdoor facilities will generally have adequate ventilation and space. In instances where natural features are inadequate to provide relief from the elements, however, owners would need to make other provisions for the animals. N.J.A.C. 2:8-7.4(b)1.

COMMENT: The baby pigs are protected from the mother laying on them during their six weeks of nursing, then they are moved to their individual pens.

RESPONSE: The commenter is describing the use of a farrowing stall, which is provided for in these rules.

COMMENT: Permitting pigs to live in conditions that do not permit the animals to turn around and rest comfortably has been deemed inhumane in the European Union and Canada.

RESPONSE: Pursuant to N.J.A.C. 2:8-7.4(b)1i and v, constructed shelters shall have adequate space for swine to stand, lie down, rest, get up and move its head freely and must provide an environment which supports swine health. As such, animals are able to rest. As discussed more fully below, the rules do not mandate that a swine be able to turn around. This practice is not inhumane and the Department notes that owners are free to provide additional space as long as the rule's other requirements are met.

COMMENT: The commenter states that standards for flooring, ventilation, housing configuration, environmental stimulation and eating, resting and dunging areas need to be incorporated into the proposed regulation.

RESPONSE: These issues are addressed by the proposed rules as they mandate that shelters:

- 1) Have adequate space for the animal to stand, lie down, rest, get up and move its head freely;
- 2) Be structurally sound;
- 3) Have a safe interior surface;
- 4) Have natural or mechanical ventilation to provide air quality and maintain an environment suitable for animals;
- 5) Provide an environment which supports swine health;

6) If enclosed yards are used, access to sharp objects or debris must be minimized to reduce risk; and

7) Have constructed floor surfaces which provide footing that minimizes injury to the swine.

Further, the rule requires that each animal have daily access to sufficient and nutritious feed, and if an animal is unable to maintain a body condition score due to group feeding practices, the animal must be fed in a manner that allows the swine to maintain an adequate BCS. The Department's rule does not mandate exact requirements for all housing, as these may vary based on individual farms and environments. Owners may choose from among different swine housing systems, including those reflective of best management practices, provided they meet the standards set forth in these rules.

COMMENT: The rules for constructed shelter are inadequate. The rule states that pigs should be provided "an environment that supports swine health," but completely fails to mention the animals' "welfare" or "well-being."

RESPONSE: The rule requires constructed shelters to provide an environment to support swine health and specifies that the shelters have adequate space, be structurally sound, have a safe interior surface and have natural or mechanical ventilation to provide air quality and maintain an environment suitable for swine. The Department has considered the animal's well-being, see, General provisions, N.J.A.C. 2:8-1.1, which states that "for the purposes of these rules, an animal's status or well being shall be determined based on a holistic evaluation of the animal."

N.J.A.C. 2:8-7.4(b)1i

COMMENT: Commenters state that swine should be able to walk, turn around freely and have space for full lateral recumbancy.

RESPONSE: Under N.J.A.C. 2:8-7.4(b)1i and v, swine shall have adequate space to stand, lie down, rest, get up and move its head freely and provides an environment which supports swine health. Publications which compared housing systems on the basis of relative changes in biological responses and corresponding decreases in fitness showed that all housing systems can meet these criteria. These publications also point to a consensus that all types of sow gestation housing systems can provide, through the amount of animal husbandry expertise of the caretaker, welfare benefits and challenges.

A review of the scientific literature suggests that overall welfare is not poorer for sows housed in stalls compared with traditional group pens. Although the science is equivocal with a variety of conclusions from a variety of experiments, stereotypies appear to develop for sows housed in either gestation stalls or group pens, although some studies have shown the frequency is greater for individually housed animals. Other studies have demonstrated a greater correlation between feeding practices and the performance of stereotypies. Indicators of stress, such as blood cortisol levels, were either similar or slightly elevated for sows in stalls, and effects on the immune system are not reported to be significantly different between sows housed in gestation stalls or group penned.

Individual stalls are utilized to protect the health of sows. Studies have shown that there are fewer injuries in sows individually housed. Group pens may result in

increased aggression and biting which appears to increase stress levels. Reproductive performance is in general better in stall-housed versus group-penned sows, although scientists believe more research is needed in this area. In addition, the health of the animals is more easily monitored when housed individually.

There are a number of alternatives to gestation stalls being evaluated. These must meet the requirements for a pig's welfare and health as well as maintain high biological performance. The Department will continue to monitor the ongoing research and make adjustments accordingly.

COMMENT: Commenters note that the rule does not address use of tethers and argue the Department should prohibit their use. The European Union has prohibited, since 1996, the construction of new installations in which sows are tethered, and the use of tethers is prohibited entirely after January 1, 2006.

RESPONSE: The Department has not specifically addressed the use of tethers for swine in this rule. The Department has found that, at present, tethering is used in the United States on an extremely limited basis. Research has shown that when not managed properly, sows which are tethered can have reproductive problems, suppression of the immune system and display signs of chronic stress. As such, tethering requires an extremely high level of management and stockmanship, which would be required if employed in New Jersey. The Department is unaware of any operations in New Jersey that tether swine and declines to prohibit the practice at this time.

N.J.A.C. 2:8-7.4(b)2

COMMENT: Tethering, gestation stalls and crates and farrowing stalls and crates are inhumane, cause suffering, distress, prevent normal behaviors and should be prohibited.

RESPONSE: Under N.J.A.C. 2:8-7.4(b)1i and v, swine shall have adequate space to stand, lie down, rest, get up and move its head freely and provides an environment which supports swine health. Publications which compared housing systems on the basis of relative changes in biological responses and corresponding decreases in fitness showed that all housing systems can meet these criteria. These publications also point to a consensus that all types of sow gestation housing systems can provide, through the amount of animal husbandry expertise of the caretaker, welfare benefits and challenges.

A review of the scientific literature suggests that overall welfare is not poorer for sows housed in stalls compared with traditional group pens. Although the science is equivocal with a variety of conclusions from a variety of experiments, stereotypies appear to develop for sows housed in either gestation stalls or group pens; although some studies have shown the frequency is greater for individually housed animals. Other studies have demonstrated a greater correlation between feeding practices and the performance of stereotypies. Indicators of stress such as blood cortisol levels, were either similar or slightly elevated for sows in stalls, and effects on the immune system are not reported to be significantly different between sows housed in gestation stalls or group penned.

In regard to nutrition, individually housed swine are allowed unimpeded access to feed. They do not have to compete with other sows which may be dominant. Also, this type of housing enables the stockman to make individual assessments on the health and nutritional status of the swine.

In regard to exercise, housing in individual pens did over time show decreases in muscle mass. However, it appeared that while sows in groups had the ability for more exercise there is an increased risk for injury due to sow interactions.

Studies have shown that there are fewer injuries in sows individually housed. Group pens may result in increased aggression and biting which appears to increase stress levels. Reproductive performance is in general better in stall-housed versus group-penned sows, although scientists believe more research is needed in this area. In addition, the health of the animals is more easily monitored when housed individually.

Overall, many of the benefits or detrimental effects associated with group or individual pens were related to construction of the pens and stockmanship. Attention to detail in the regard is essential. There are a number of alternatives to gestation stalls being evaluated. These must meet the requirements for a pig's welfare and health as well as maintain high biological performance. The Department will continue to monitor the ongoing research and make adjustments accordingly.

COMMENT: Temporary confinement in a crate should be allowed for medical purposes only.

RESPONSE: This rule does not preclude confinement in a crate for medical purposes. The Department will not limit confinement for medical purposes only as publications which compared housing systems on the basis of relative changes in biological responses showed that all housing systems had benefits as well as some detrimental effects.

COMMENT: The Department should phase out of the use of gestation stalls and tethering during most of a sow's pregnancy, for welfare reasons within a "reasonable period of time" as other countries have (except for first four weeks after service).

RESPONSE: Under this rule, animal welfare is a state or condition of physical and psychological harmony between the animal and its surroundings characterized by an absence of deprivation, aversive stimulation, over stimulation or any other imposed condition that adversely affects health and productivity of the animal.

When examining the parameters to assist in evaluating an animal's welfare as defined above, ample research to date has shown that sows housed in stalls have no significant negative welfare consequences or distress as compared to sows in traditional group pens.

A review of the scientific literature suggests that overall welfare is not poorer for sows housed in stalls compared with traditional group pens. Although the science is equivocal with a variety of conclusions from a variety of experiments, stereotypies appear to develop for sows housed in either gestation stalls or group pens, although some studies have shown the frequency is greater for individually

housed animals. Other studies have demonstrated a greater correlation between feeding practices and the performance of stereotypes. Indicators of stress, such as blood cortisol levels, were either similar or slightly elevated for sows in stalls, and effects on the immune system are not reported to be significantly different between sows housed in gestation stalls or group penned.

Studies have shown that there are fewer injuries in sows individually housed. Group pens may result in increased aggression and biting which appears to increase stress levels. Reproductive performance is in general better in stall-housed versus group-penned sows, although more research is needed in this area. In addition, the health of the animals is more easily monitored when housed individually.

COMMENT: Sows in gestation crates in time develop osteoporosis and muscle deterioration, and have weakened bones from lack of exercise.

RESPONSE: The Department notes some research has shown sows housed in stalls weighed less overall, had decreased muscle weight and bone strength but higher reproductive efficiency than group housed sows. (Marchant and Broom, 1996). In this study, femur breaking strength was correlated to number of pigs born alive and number of pigs reared suggesting that it could be argued that reproductive demand for minerals such as calcium could play a role in lessening bone strength. The study did not make any observations showing that decreased bone strength in stall housing lead to increased fractures. In fact, the EU Scientific Veterinary Committee Report of September 30, 1997, states that sows

seldom break their legs. The report states that sows in both confined and group housing may have leg problems.

Given that, to date, research has not provided evidence that lower muscle weight and less bone strength correlates to stall housing, the Department will not make any changes based on this comment. The Department notes that other factors such as flooring types and diets may also play a role in lameness and calcium loss. The rule provides that housing must support swine health.

COMMENT: There is no language preventing a farmer from keeping a sow in a crate where her head is just one inch away from an adjacent feeder, where her rear quarters are just one inch away from the back of her stall, where her nose is just one inch away from the front of her stall, and where her head is just one inch away from the water trough.

RESPONSE: Under N.J.A.C. 2:8-7.4(b)1i and v, swine shall have adequate space to stand, lie down, rest, get up and move its head freely and provide an environment which supports swine health. N.J.A.C. 2:8-7.4(b)2 also requires that it be able to stand up and lie down unimpeded, rest and move its head. The scenario proposed by the commenter would not meet the rule's requirements.

COMMENT: Commenter recommends the Department adopt the recommendations of the Scientific Veterinary Committee of the European Commission.

RESPONSE: As noted above, many of the benefits or detrimental effects associated with group or individual pens were related to construction of the pens and stockmanship. Attention to detail in the regard is essential. There are a

number of alternatives to gestation stalls being evaluated. These must meet the requirements for a pig's welfare and health as well as maintain high biological performance. The Department is familiar with the report cited by the commenter. The Department notes there are vast differences between the swine industry in the United States and the swine industry in Europe. The EU Scientific Veterinary Committee Report of September 30, 1997 notes that a number of their recommendations will increase cost thus reducing a farmer's income. The report states that increasing cost by 1 percent may reduce income by 30 to 50 percent. The report acknowledges that many consumers may be unwilling to pay more for pork grown under the recommendations which would "be a serious threat to income and employment in the EU pig industry." Because the research reviewed does not support the elimination of individual stalls, the Department will not prohibit them.

COMMENT: Sows in crates have less cardiovascular fitness than in group-housed sows; pigs which die during transport are diagnosed as having cardiovascular problems.

RESPONSE: Research comparing sows raised in stalls and groups have not reported increased cardiac disease risk related to housing technique, although basal heart rates were highest in stall-raised sows. The authors suggested that the higher basal heart rates may be indicative of reduced cardiovascular fitness from lack of exercise, but the study did not report any resulting disease from the higher heart rates. The study did not review cause of death during transportation. The Department is unaware of any study which looked at direct links between the

effects of sow housing on cardiovascular fitness and cause of death during transport. The Department will not make any changes based on this comment as science has not indicated a specific, consistent disease risk.

COMMENT: Urinary tract infections are more common in crated or tethered sows than in sows which are not confined during pregnancy. This high incidence of urinary infections is associated with the low levels of activity imposed on sows kept in crates or tethers. These low levels of activity seem to be associated with infrequent drinking. As a result, confined sows urinate less frequently than animals which are not closely confined. It is, moreover, thought that another reason why closely confined sows are more prone to urinary infections is that they have to lie, or sit, in their faeces.

RESPONSE: The article by Madec et al., 1986 which is cited to link confined sows to urinary tract infections in actuality made no comparisons with group or loose housed sows. All of the sows in the study were tethered. The study did show that of 33 sows having a daily water intake of less than 12 liters, 16 had a bacteriuria. The authors concluded that lower water intake may predispose sows to urinary tract infections. In the study it was found that the fat sows, lame sows and sows late in pregnancy had lower water intakes. Since the study did no comparisons with other types of housing, one cannot conclude that the housing type predisposes to urinary tract infections.

Regardless of this study and its findings, the Department's rule under N.J.A.C. 2:8-7.4(b)1v requires that the environment support swine health. In addition,

under N.J.A.C. 2:8-7.6(a), sick or injured swine must be promptly treated or humanely euthanized.

COMMENT: Crated and tethered sows frequently exhibit stereotypies such as bar-biting, sham-chewing and tongue-rolling, and may be clinically depressed. This indicates difficulty in coping and poor welfare.

RESPONSE: Publications which compared housing systems on the basis of relative changes in biological responses and corresponding decreases in fitness showed that all housing systems can meet these criteria. These publications also point to a consensus that all types of sow gestation housing systems can provide, through the amount of animal husbandry expertise of the caretaker, welfare benefits and challenges.

A review of the scientific literature suggests that overall welfare is not poorer for sows housed in stalls compared with traditional group pens. Although the science is equivocal with a variety of conclusions from a variety of experiments, stereotypies appear to develop for sows housed in either gestation stalls or group pens, although some studies have shown the frequency is greater for individually housed animals. Other studies have demonstrated a greater correlation between feeding practices and the performance of stereotypies. Indicators of stress such as blood cortisol levels, were either similar to or slightly elevated for sows in stalls, and effects on the immune system are not reported to be significantly different between sows housed in gestation stalls or group penned.

COMMENT: Sows are intelligent animals which exhibit nurturing and maternal behavior. They require exercise and other forms of stimulation and have a

preference for social contact and exploration which are impossible for sows confined in crates and by tethers.

RESPONSE: While the Department acknowledges the comments about social interaction between sows, aggression and dominance have also been documented in group-housed sows. Group pens may result in increased aggression and biting especially of the vulva. This aggression appears to increase stress levels in group housed sows. Studies have shown that there are fewer injuries in sows individually housed. In addition, the health and nutrition status of the animals is more easily monitored when housed individually. Individual pens may be constructed so as to allow social interaction but prohibit the negative effects of aggression. Under this rule, animal welfare is a state or condition of physical and psychological harmony between the animal and its surroundings characterized by an absence of deprivation, aversive stimulation, over stimulation or any other imposed condition that adversely affects health and productivity of the animal. When examining the parameters to assist in evaluating an animal's welfare as defined above, research to date has shown that sows housed in stalls have no significant negative welfare consequences or distress as compared to sows in traditional group pens.

COMMENT: Gestation crates impair the well-being of a sow, leading to problems including: infections, morbidity and mortality; lameness and injury; aggression; cardiovascular fitness and depression.

RESPONSE: The Department has reviewed literature comparing confinement vs. group housing and how this relates to swine health. When examining stall

housing vs. group housing, the Department could find no health conditions other than lameness which may be attributed to the specific housing type. With regard to lameness, both housing types could predispose swine to lameness. In fact the EU Scientific Veterinary Committee Report of September 30, 1997, states that sows in both confined and group housing may have leg problems.

The provisions of the rules state that the environment must support swine health and that any sick or injured swine must be promptly treated or humanely euthanized.

COMMENT: Commenter states the report of the SVC supports the position of there being advantages and disadvantages to all housing systems.

RESPONSE: The Department agrees with the comment.

COMMENT: Commenter quoting the Australian Journal of Research (2001, 52, 1-28) states, "On balance, it would appear that both individual and group housing can meet the welfare requirements of pigs. However, while public perceptions may result in difficulties with the concept of confinement housing, this will vary in different cultures. The issue of public perception should not be confused with welfare; this is an important message that needs to be disseminated. In fact, the focus on housing systems may have been to the detriment of recognizing the relative importance of another feature of the commercial pig's environment, that is the stockperson."

RESPONSE: Publications which compared housing systems on the basis of relative changes in biological responses and corresponding decreases in fitness showed that all housing systems had benefits as well as some detrimental effects.

Overall, many of the benefits or detrimental effects associated with group or individual pens were related to construction of the pens and stockmanship. As the commenter, the Department acknowledges the importance of the stockman/stockwoman.

COMMENT: "For sow space to be considered adequate, sows, whether housed in groups or in stalls, must be able to:

- Lie down without the head having to rest on a raised feeder;
- Lie down without the rear quarters having to be in contact with the back of the stall, and
- Easily lie down in full lateral recumbancy and stand back up."

This performance standard is acceptable to a consensus of the professional animal scientists and veterinarians working in the field of animal welfare and is already part of the practices of the New Jersey and U.S. pork producers. Changing the language may cause confusion.

RESPONSE: The wording in the rule under N.J.A.C. 2:8-7.4(b)2i through iv states that:

- i. The sow's head must not have to rest on an adjacent feeder;
- ii. The sow's quarters must not be in contact with the back of the stall with her nose in contact with the front of the stall;
- iii. The sow's head must not have to rest in the water trough; and
- iv. A pregnant sow's stall must be wide enough to allow the sow to stand up and lie down unimpeded, rest and move its head freely.

The rule addresses the concerns of the commenter and a change is not necessary.

COMMENT: Stalls may be used to feed and monitor individual sows and gilts.

The American Association of Swine Veterinarians supports this language, but suggests that the language could be strengthened if it were worded as follows: “Stalls may be used to house, feed, and monitor individual sows and gilts...”

RESPONSE: It is not necessary to add the word “house” to this sentence as it falls under the “keeping” section and is implied.

COMMENT: According to the guidelines adhered to by most universities and research facilities, including Rutgers University, all animal enclosures must allow the animal to turn around, and permit full, unimpeded lateral recumbancy.

RESPONSE: Rutgers University has no specific guidelines requiring the specifications as stated by the commenter. Animals used for research at Rutgers University would be covered by Federal laws related to animal research. Livestock and poultry used in production agriculture are exempted from the provisions of the Animal Welfare Act.

2:8-7.4(c)

COMMENT: Regarding keeping pigs in enclosed yards, proposed section N.J.A.C. 2:8-7.4(c) makes clear that pigs should be protected from “sharp objects and debris” that could threaten the animals’ health. However, this provision should also state that pigs should be protected from similar objects that could threaten their welfare.

RESPONSE: Protecting an animal's health and reducing the risk of injury serve to enhance the welfare of animals. Owners are expected to remove objects, even if dull, if they threaten animal health.

N.J.A.C. 2:8-7.4(c)1 and 2

COMMENT: Commenters object to the terms "actual threat" and "minimized" as vague or ambiguous. They recommend that hazardous objects be "completely neutralized" and that "actual threat" should be better defined to preclude the possibility that animals would first have to be injured before action is taken by caretakers, animal control officers, or livestock inspectors.

RESPONSE: The rule is not vague or ambiguous. The requirement that sharp objects and debris that pose an actual threat to the animal's health be minimized is an appropriate description of the types of hazards that should be addressed. Actual threat does not mean an animal must be first injured rather, the term speaks to likelihood that the animal will be injured given facts such as the size of the animal, amount of space available and time spent in environment. The rule specifically requires that if stationary objects which pose a risk of injury cannot be removed, reasonable efforts must be made to minimize contact by fencing off or covering the object or similar means. If objects are not stationary, the rule requires that actual threats to the animal's health shall be minimized to reduce the risk of injury. This construction recognizes that not all objects will present an actual threat to the animal but requires the owner to take action to prevent harm.

COMMENT: It is difficult to imagine the need to fence off stationary objects that could pose a risk of injury but cannot be removed if there is any reasonable

amount of adequate space supplied so the animals do not have to have contact with the object. For example, would it be required to fence off such an object in the middle of a pasture when pigs have ample room to simply walk around the object? It is inconceivable that a fence would be needed to keep the pigs from purposefully impaling or injuring themselves on the object that they could clearly and easily avoid.

RESPONSE: N.J.A.C. 2:8-7.4(c)1 and 2 require that sharp objects that pose an actual threat to the swine's health shall be minimized to reduce the risk of injury and, if stationary objects that pose a risk cannot be removed, reasonable efforts must be made to minimize contact by fencing off, covering the object or by similar means. For example, where the risk of injury is low, fencing may not be needed, but other means employed to mitigate even accidental contact could be employed. The rule is appropriate.

N.J.A.C. 2:8-7.4(d)

COMMENT: Add "Bedding must be provided."

RESPONSE: Research has shown varying effects on the use of bedding in different types of housing. Bedding has been shown to solve some thermoregulatory problems but has also been shown to cause other thermoregulatory problems. In some instances, access to straw reduced aggression while another study demonstrates that access to straw may have actually increased aggression. The results of the limited research thus far indicate that recommendations with regard to bedding must take into account many factors, including but not limited to housing type, indoor/outdoor environment,

feeding regimes, etc. The regulation permits, but does not require, owners to use bedding materials. If used, it must not be inimical to swine health.

COMMENT: Concrete, barren or slatted floors should be prohibited.

RESPONSE: Constructed floor surfaces must provide footing that minimizes injury to the swine and that the environment must support swine health. Concrete, barren or slatted floors that satisfied the rule's requirements would be permitted.

COMMENT: Citing to the European Union, the commenter encourages the Department to require that pigs have access to soil for rooting.

RESPONSE: The Department has provided keeping standards which formulate a baseline for humane treatment of swine. The Department recognizes that alternative methods for raising swine exist, including indoor housing, which can provide a humane environment. When comparing indoor and outdoor housing, there was no significant difference in indicators of stress. Moreover, rooting may be harmful to the animal as it can facilitate parasite infestation. The Department will not require that pigs have access to soil for rooting but notes that owners may provide such access so long as swine health is maintained.

N.J.A.C. 2:8-7.5(a)

COMMENT: This provision should mandate appropriate humane training for all transporters in accordance with proposed N.J.A.C. 2:8-8.1(b)1i.

RESPONSE: The rule's requirements for transportation of animals applies to transporters who must comply with those requirements. The Department expects

persons responsible for transport to have basic knowledge of animal behavior. If training is necessary, the Department will facilitate such training but declines to require it.

COMMENT: The provision should make clear that the owner of the animals is also responsible for the welfare of the animals at all times, including transport.

RESPONSE: The rule states that the driver of the transport vehicle and/or the person who is present in the vehicle for purposes of transporting the cattle shall be responsible for the welfare of the animals at all times during transport. This is consistent with the European Union, Canada and other countries. Owners are expected to select transporters who have appropriate knowledge of animal welfare and who will comply with the Department's regulations. Because owners have an interest in the well being of their animals during transport, they will take appropriate steps for the animals' welfare. The Department does not believe the suggested change is necessary.

N.J.A.C. 2:8-7.5(b)

COMMENT: Commenters assert that the language "minimizes injury, illness and death" is vague and does not give producers or enforcement officials guidance to determine satisfactory outcomes; noise and excessive force should be avoided; electric goads should not be used.

RESPONSE: The rule specifically requires that handling and transporting be undertaken to minimize adverse affects on animals. Transporters or owners are expected to have basic knowledge of animal behavior and should identify conditions that are hazardous to animal health. Proper handling techniques will

avoid use of excessive force and will assist in reduction of stressors on the animals. The Department will facilitate training as necessary. Itemizing events or conditions that would minimize adverse events is a nearly impossible task given the various situations that arise during transport. The rule's use of the term minimize, whose commonly understood meaning is "to reduce or keep to a minimum" (Webster's New Encyclopedic Dictionary, Merriam-Webster, Inc., 2002), advises both owners and enforcement officials of the obligations imposed by the rules.

N.J.A.C. 2:8-7.5(d)

COMMENT: Commenter asserts that the term "minimal delay" should be defined or that specific times should be mandated pertaining to loading and unloading with adequate stops for rest and water. The term minimal delay is too subjective.

RESPONSE: The Department believes the term "minimal delay" when read in conjunction with the remainder of the rule, provides sufficient guidance and is not unduly subjective. The Department notes that given the variables in transportation (weather, vehicle breakdowns, etc.), it is neither practical nor desirable to define the term with more specificity.

COMMENT: Commenter states that maximum time for transportation of pigs should be eight hours so they avoid dehydration.

RESPONSE: As discussed more fully in the Responses below, the Department has followed Federal law related to the transportation of swine and access to feed and water.

N.J.A.C. 2:8-7.5(e)

COMMENT: The phrase “adequate ventilation,” an additional requirement for animals during transport, should be clarified.

RESPONSE: The term “adequate ventilation” must be read in context of complete rule, which requires consideration of the animal’s size, age, breed, etc., requires transport in a manner that minimizes injury, illness and death, and relief from the elements. In addition, the Department has adopted and incorporated the Livestock Trucking Guide by Temple Grandin, Ph.D., for the National Institute of Animal Agriculture which provides additional guidance on space requirements for swine on trucks. The Livestock Trucking Guide provides recommendations for variable weather conditions. The rule provides adequate guidance for transporters and enforcement officials.

N.J.A.C. 2:8-7.5(f)

COMMENT: Remove the statement “detrimental to the animal’s health” after hyperthermia or hypothermia. Hyperthermia and hypothermia are never comfortable conditions and animals in hyperthermic or hypothermic conditions must be provided relief immediately.

RESPONSE: By definition, hypothermia is a body temperature below what is normal for that species and hyperthermia is a body temperature above what is normal for that species (as noted, and for the reasons set forth above, the Department is proposing an amendment to the definition of hyperthermia elsewhere in this issue of the New Jersey Register.) Slight changes in body

temperature may not be detrimental. Where such change is detrimental, failure to provide relief would violate the rule.

COMMENT: The proposed rule is too vague, and guidance must be provided on the warning signs (for example, hazardous body temperatures) that might indicate the onset of the conditions “hypothermia” or “hyperthermia.”

RESPONSE: Hyperthermia and hypothermia are actual conditions which may impact an animal’s health if the variation in body temperature is significant. Physical examination of an animal with manifestations of hyperthermia and hypothermia such as changes in heart rate, respiration rate, body temperature changes, etc., may demonstrate these conditions. The Department will facilitate training that will assist people in identifying the clinical parameters.

N.J.A.C. 2:8-7.5(h)

COMMENT: Include: “They must have enough room for each pig to lie down without lying on top of each other.”

RESPONSE: The Department has adopted and incorporated the Livestock Trucking Guide by Temple Grandin, Ph.D., for the National Institute of Animal Agriculture which provides minimum space requirements for hogs during transport. The guide also provides advice on preventing piling as this may occur regardless the space required.

N.J.A.C. 2:8-7.5(k)

COMMENT: The standard permits excessive withholding of food and water both prior to and during transport.

RESPONSE: The Department disagrees that the standards permit excessive withholding of food or water. Prior to transport, animals are to have daily access to feed and water. When transporting, owners must take steps to minimize injury, illness or death and transport the animals with minimal delay. Owners and transporters are expected to take such steps to ensure the animals may be safely transported. When in holding pens, animals must have access to water, and if held longer than 24 hours, access to feed.

N.J.A.C. 2:8-7.5(k)1

COMMENT: Clarify to read: “These are maximum total times inclusive of and not in addition to transport times.”

RESPONSE: N.J.A.C. 2:8-7.5(k)1 specifically states the 24-hour time without feed is the maximum time and is not in addition to transport time. Federal law permits 28 hours without feed and water during transport. The Department has incorporated the Federal rules regarding transportation of animals.

COMMENT: Delete “not moved from an auction barn, transfer station or similar location.”

RESPONSE: The rule requires that animals in an auction barn, transfer station or similar location have access to water and, if held longer than 24 hours, access to feed in the holding pens. Deleting the language would not alter that requirement. The Department declines to make the suggested change.

COMMENT: The science indicates that pigs suffer from travel sickness and can begin to experience dehydration after just six to eight hours of transportation. The

maximum time for which pigs should be transported is eight hours, as after eight hours travel, pigs will have a strong need for feed and water.

RESPONSE: Research (Brown et al, 1999) which compared transport times of eight hours and more (up to 24 hours) for swine, demonstrated that all were found, upon veterinary inspection, to be in good clinical condition throughout the journey. Subjectively, pigs did not appear to be stressed during transport. In fact, cortisol concentrations, an indicator of stress, was very low in all groups after six hours in lairage after transport, indicating negligible effects of transport. The research also found that there were some signs of slight dehydration in all groups, which were all rapidly reversed after water was provided post-transport. The Department notes that there was no evidence to demonstrate inhumane conditions caused by transport without water for over eight hours. The Department will monitor ongoing research in this area and make adjustments accordingly.

N.J.A.C. 2:8-7.6(a)

COMMENT: The regulations should require that animals be treated to relieve pain, explicitly require veterinary care for animals who are sick or injured within a stated period of time and that such care should return the animal to full health. In the event the animals do not recover, they should be taken out of the production cycle to recover or be humanely euthanized.

RESPONSE: The rule states: “[s]ick or injured swine shall be promptly treated or humanely euthanized” (N.J.A.C. 2:8-7.6(a)), and “[p]roper medical care for the diagnosis or management of injury or disease must be provided to sick or injured animals.” (N.J.A.C. 2:8-7.6(c)). The regulation, consistent with N.J.S.A. 45:15-

8.1, permits owners to administer to the ills and injuries of their own animals (N.J.A.C. 2:8-7.6 (c)1). While there are occasions when veterinary care will be necessary, the Department declines to identify specific circumstances under which such care is mandated due to the broad spectrum of illnesses and injuries and the varying capabilities of owners to treat such illnesses or injuries. The rule addresses the commenter's concerns.

COMMENT: Commenters state not all sick or injured swine require "treatment," at times, rest or further monitoring may be appropriate. Veterinarians are best suited to make that determination and the rule should provide for that.

RESPONSE: As noted above the rule states: "[s]ick or injured swine shall be promptly treated or humanely euthanized" (N.J.A.C. 2:8-7.6(a)) and "[p]roper medical care for the diagnosis or management of injury or disease must be provided to sick or injured animals." (N.J.A.C. 2:8-7.6(c)). The regulation, consistent with N.J.S.A. 45:15-8.1, permits owners to administer to the ills and injuries of their own animals (N.J.A.C. 2:8-7.6(c)1). Rest or monitoring of a condition is part of medical treatment or management of an injury or illness. While there are occasions when a veterinarian should be consulted, the Department declines to identify specific circumstances under which such consulting is mandated due to the broad spectrum of illnesses and injuries and the varying capabilities of owners to treat such illnesses or injuries.

N.J.A.C. 2:8-7.6(a)1

COMMENT: The joint American Association of Swine Veterinarians and National Pork Board publication entitled "On Farm Euthanasia of Swine-Options

for the Producer” details more specific information on humane euthanasia of swine of all sizes and is an additional resource to reference for pork producers.

RESPONSE: Provided that the techniques described in the publication referenced by the commenter are allowed as the acceptable methods of euthanasia as set forth in the American Veterinary Medical Association Report on Euthanasia, they may be utilized by those involved in these procedures. The rules require euthanasia to be performed by knowledgeable individuals who are skilled in the method used.

N.J.A.C. 2:8-7.6(a)3

COMMENT: The proposed rule should define medical care more clearly and require that medical care be designed to alleviate suffering. Moreover, the word “survive” should be replace with “recover and regain their ability to stand and walk.”

RESPONSE: The rule requires “appropriate medical care” be provided to non-ambulatory animals if they can reasonably be expected to survive and the owner chooses to attempt treatment. Appropriate medical care in this instance refers to treatment that is suited to the animal’s condition. The rule requires that the animal be handled humanely at all times so as not to cause unnecessary pain or injury and that proper medical care for the diagnosis and management of disease must be provided. Alleviation of suffering is implied in these standards. The Department declines to substitute “recover and regain ability to stand and walk” because it believes that appropriate treatment should be provided (where an owner chooses to attempt treatment (N.J.A.C. 2:8-7.6(a)3iv)) for those animals which could survive, regardless of whether the animal could regain its mobility.

COMMENT: The proposed standards explicitly allow the transport of “downer” cattle, small ruminants and swine. This practice is inhumane and should be proscribed. Instead, it should be required that all animals either be treated by a veterinarian or humanely euthanized. Downed animals should not be dragged.

RESPONSE: The rule mandates that disabled swine must be moved as safely as possible in order to minimize injury and shall not be dragged while conscious, except to provide life-saving treatment or unless they are in a state equivalent with one of general anesthesia. The regulation states that downed livestock must be handled at all times in a humane manner even if they are to be slaughtered or euthanized. The regulation was intended to permit swine to be euthanized on the farm or sent directly to slaughter or to a facility for veterinary care which is consistent with current practice. They may not be moved to a livestock auction. Because the rule is not clear that non-ambulatory disabled swine may not be transported to be sold at livestock markets (as opposed to slaughterhouses), the Department will propose, in a notice of proposal published elsewhere in this issue of the New Jersey Register, an amendment to the rule to prohibit transport of downed swine to livestock markets.

COMMENT: Proposed N.J.A.C. 2:8-7.6(a) should prevent the transport, marketing and slaughter of downed animals. They should be treated or humanely euthanized.

RESPONSE: The regulation states that sick or injured swine must be promptly treated or humanely euthanized. The Department notes that swine may need to be transported to receive treatment, or to be humanely euthanized, which may

include slaughter. The Department will not limit the option of the owner to choose among treatment, euthanasia or slaughter.

COMMENT: Many states and the European Union have determined that failing to provide adequate veterinary care to an animal is cruel, inhumane and illegal.

RESPONSE: The proposed regulations provide for adequate veterinary care. N.J.A.C. 2:8-7.6(a) requires that all sick or injured swine must be promptly treated or humanely euthanized. Also, proper medical care for the diagnosis or management of injury or disease must be provided to sick, injured, or non-ambulatory disabled swine N.J.A.C. 2:8-7.6(c). An owner has discretion after injury to determine whether to treat or to euthanize the animal. The Department will not require treatment in all cases where recovery is possible.

N.J.A.C. 2:8-7.6(a)3i

COMMENT: Replace current text with: “shall not be transported. Shall be separated from normal ambulatory swine while being held so that the normal ambulatory swine do not injure the disabled swine;”

RESPONSE: The rule states that non-ambulatory disabled swine “shall be separated from normal ambulatory swine while being held so that the normal ambulatory swine do not injure the disabled swine:” Sick or injured swine must be promptly treated or humanely euthanized. The Department notes that swine may be transported to receive treatment, to be euthanized or be slaughtered. At all times, the animal shall be handled humanely.

N.J.A.C. 2:8-7.6(a)3ii

COMMENT: Shorten N.J.A.C. 2:8-7.6(a)3ii to: “Shall not be dragged while conscious.”

RESPONSE: The Department has limited dragging an animal while conscious except when necessary to provide life saving treatment. The rule reflects the possibility that dragging may be necessary to save an animals life or prevent injury. The rule appropriately limits the instances where moving a conscious animal will be permitted.

N.J.A.C. 2:8-7.6(a)3iii

COMMENT: Revise to: “A disabled swine must be moved as safely as possible, in order to minimize animal suffering and prevent injury to the animal and handler.”

RESPONSE: The rule as currently drafted requires that a disabled, non-ambulatory animal be moved safely (N.J.A.C. 2:8-7.6(a)3iii) and that it should be handled humanely at all times even if it is to be slaughtered or euthanized, so as not to cause unnecessary pain and injury (N.J.A.C. 2:8-7.6(a)3v). The suggested change is not necessary.

N.J.A.C. 2:8-7.6(a)3iv

COMMENT: Replace “and the owner chooses to attempt treatment” with “and if the owner chooses to not attempt treatment, the animal must be humanely and promptly euthanized.”

RESPONSE: N.J.A.C. 2:8-7.6(a) requires that all sick or injured swine must be promptly treated or humanely euthanized. An owner has discretion with his

animal after injury or illness to determine whether to treat, euthanize on farm or send to slaughter. The Department will not limit the option of the owner to choose among treatment, euthanasia or slaughter.

N.J.A.C. 2:8-7.6(a)4

COMMENT: With regard to humane euthanasia, the Department states it “shall be performed only by knowledgeable individuals who are skilled in the method used.” We believe that the Department should also require that such individuals be experienced in the method used, in addition to knowledgeable and skilled.

RESPONSE: The rule requires the individual to be skilled; adding “experienced,” which implies that the individual is proficient in the procedure, would be redundant.

COMMENT: Determining the skill of the person performing euthanasia procedures is subjective and open to interpretation. Euthanasia being performed by a person who has been trained in appropriate methods is an objective point that can be assessed.

RESPONSE: If a person is knowledgeable and skilled in a method of euthanasia, he or she has had some training and experience to develop this skill. While training is important, it does not necessarily equate to possessing the skill. In fact, some may receive training and not use the techniques for years. The purpose of the rule is to provide for the humane euthanasia of the animal. The rule meets that purpose.

N.J.A.C. 2:8-7.6(b)

COMMENT: The rule that sick, injured and dead animals must be removed from contact with live animals within 24 hours is too permissive. The time frame should be reduced, for example, where a carcass poses a health risk to other animals.

RESPONSE: Depending on the environment, some animals are checked at least once a day during feeding time. Moreover producers may not know the precise time of death. The 24-hour time frame, which is the maximum time frame, will generally ensure prompt removal. The Department notes further that owners will likely be aware of conditions of their animals and that they are required to ensure sick or injured animals are promptly treated or humanely euthanized.

N.J.A.C. 2:8-7.6(c)

COMMENT: Proposed N.J.A.C. 2:8-7.6(c) states, “proper medical care for the diagnosis or management of injury or disease must be provided to sick, injured, or non-ambulatory disabled swine.” This statement is vague and inadequate. It does not appear to require debilitated animals to receive medical care for the sake of their welfare. Instead the animals are to receive medical care only for the diagnosis or management of injury or disease. “[F]or the diagnosis or management of injury or disease” should be deleted.

RESPONSE: The Department does not know how one can improve a sick or injured animal’s welfare and health without a diagnosis of the injury or disease. The diagnosis will contribute to the proper management of the injury or illness which will address the animal’s welfare.

COMMENT: Commenter cites to an Ohio case in which it asserts that financial considerations are not a valid excuse for inhumane conduct.

RESPONSE: The case cited by the commenter concerned the actions of the owner of a pet dog which had disease as a sequelae to heartworm infestation. An animal shelter volunteer, with permission from the owner, took the dog to a veterinarian who euthanized it. Upon complaint of animal cruelty, the court found that failure to seek veterinary care for the dog violated Ohio's laws. The regulation provides that an owner shall obtain appropriate medical care for a non-ambulatory disabled animal if the animal can reasonably be expected to survive and the owner chooses to attempt treatment. The case cited allowed for euthanasia. The proposed regulations provide for adequate veterinary care and do not allow financial reasons as a justifiable excuse for not providing treatment. N.J.A.C. 2:8-7.6(a) under general provisions requires that all sick or injured swine must be promptly treated or humanely euthanized. Also, proper medical care for the diagnosis or management of injury or disease must be provided to sick, injured, or non-ambulatory disabled swine N.J.A.C. 2:8-7.6(c).

N.J.A.C. 2:8-7.6(d)

COMMENT: Proposed N.J.A.C. 2:8-7.6(d) states that "[n]othing in these rules shall prohibit detusking, removing needle teeth, castration, ear notching, tattooing, tail docking or other routine husbandry practices provided they are performed in a sanitary manner by a knowledgeable individual and in such a way to minimize pain." While we appreciate that the Department suggests that such practices be performed in "such a way as to minimize pain," we are concerned about the

vagueness of this statement. We are also concerned that the Department does not suggest or encourage alternatives to these painful procedures, nor does the Department require animals to receive anesthesia at any time.

RESPONSE: The Department, after review of comments received, has determined that its definition of routine husbandry practices needs clarification. Simultaneously with this adoption, elsewhere in this issue of the New Jersey Register, the Department will propose to amend the definition of “routine husbandry practices” to refer to techniques commonly taught by veterinary schools, land grant colleges, and agricultural extension agents for the benefit of animals, the livestock industry, animal handlers and the public health and are employed to raise, keep, care, treat, market and transport livestock. The benefits to the animal and the herd, the need for specific training (for example, a veterinarian), and the humaneness of the practices are core components of the methods taught by those institutions. As noted above, the term “minimize pain” is not vague. Moreover, alternatives to such husbandry practices may be employed by owners as long as they are consistent with these rules. In the interim, the rule, which requires that knowledgeable individuals perform the procedures, given the age, breed, physiologic condition, etc., in a way to minimize pain, is appropriate. The Department notes that anesthesia should be used case-by-case basis when appropriate as its use has risks as well.

COMMENT: Delete N.J.A.C. 2:8-7.6(d). Commenters state that tail docking should be prohibited.

RESPONSE: The Department disagrees that tail docking should be prohibited. The practice, which is taught at veterinary schools, land grant colleges, and agricultural extension agents, is for the benefit of the animal and overall herd health. Swine with docked tails suffer fewer injuries related to tail biting and attendant infections and complications. The long-term health and management benefits outweigh the short-term stress and /or pain associated with tail docking procedures.

COMMENT: The Scientific Veterinary Committee of the E.C. states, “[t]ooth-clipping and tooth grinding are likely to cause immediate pain and some prolonged pain,” and it recommends that “efforts should be made to avoid the necessity for either.”

RESPONSE: The Department has reviewed the report cited by the commenter. While tooth clipping or removing needle teeth may cause some pain for the animal, there are benefits to the herd (for example, preventing injuries from biting) as well as benefits to the sow on which the piglet is suckling. The techniques are taught by veterinary schools, land grant colleges, and agricultural extensions and when done as required by the rule, are not inhumane.

COMMENT: The Scientific Veterinary Committee of the E.C. reports that “[e]ar-tagging and ear-notching may be painful to pigs. Nose-ringing is painful as well and affects sensitive tissue of the pigs.”

RESPONSE: The use of nose rings, a routine husbandry practice, discourages rooting behavior which may be harmful to the animal as it facilitates parasite infestation; use of nose rings may prevent escape from pastures. Ear tagging and

ear notching, which is used for animal identification, allows for animals to be traced as necessary for identification of disease and herd health management. These procedures, if performed, are to be done in a way to minimize pain.

COMMENT: The Department should promote improved management techniques and facilities which could remove the necessity for such routine husbandry practices which are painful procedures, are cruel and inhumane and are “detrimental to the welfare of pigs, especially when carried out by incompetent and inexperienced persons.”

RESPONSE: As discussed above, routine husbandry practices, when performed as taught by veterinary schools, land grant colleges, and agricultural extensions and consistent with this rule (that is, performed by knowledgeable individuals and in a way to minimize pain), are appropriate for animal and herd health and are not inhumane. To the extent that different management techniques may reduce the need for certain practices, the Department encourages owners to use them.

COMMENT: We urge the Department to recommend that boars not be castrated unless the welfare benefits associated with the procedure are greater than any adverse welfare effects caused by the procedure.

RESPONSE: Boars (intact male swine) are more aggressive than barrows (castrated male swine). The detrimental effects of aggressive behavior on the herd are significant. The adverse effects of the procedure on the animal are minimized when performed according to the rule’s requirements.

COMMENT: If castration occurs, it should only be done surgically and with painkillers. European Union law requires that “[i]f practices the castration of male

pigs aged over four weeks may be carried out only under anesthetic by a veterinarian or a person qualified.”

RESPONSE: Castration is taught at veterinary schools, land grant colleges, and agricultural extensions. The procedure must be performed by a knowledgeable individual in a way to minimize pain. The Department expects procedures to be performed in a manner consistent with the methods taught. Depending on the age of the animal at castration, anesthetics may be contraindicated. To the extent anesthesia is recommended, it should be used.

COMMENT: European Union law prohibits all procedures “intended as an intervention carried out for other than therapeutic or diagnostic purposes or for the identification of the pigs,” with few exceptions. European Union law permits tail docking and reduction of teeth but never as routine measures but only where there “is evidence that injuries to sows’ teats or to other pigs’ ears or tails have occurred.”

RESPONSE: In earlier Responses, the Department has identified the need for certain practices to support animal and herd health, for example, tail docking is a husbandry practice done to reduce or prevent the biting and chewing of tails by other pigs. In most cases, damage is limited to bleeding and wounds; however, there may be severe consequences such as local infections, systemic infections, spinal abscesses, paralysis and in extreme cases, death. Tooth clipping and tooth grinding may be necessary because piglets are born with eight very sharp teeth. These teeth are clipped to prevent facial injuries to other piglets and damage to the sow’s udder. It is important to perform this procedure properly as outlined

above as full clipping of teeth can lead to infection or shattering of the teeth. Detusking is appropriate as tusks can cause severe injuries to other swine and to humans handling swine with tusks. As with tooth clipping, it is important to perform these procedures consistent with the rule and as taught by the teaching institutions to avoid adverse reactions.

COMMENT: In regard to routine husbandry practices, there are no guidelines to determine what practices are beneficial and necessary and the regulations do not require an evaluation of the humaneness of a practice. The rule should identify what practices may be performed by a non-veterinarian and at what ages the procedures can be performed.

RESPONSE: The Department, after review of comments received, has determined that its definition of routine husbandry practices needs clarification. Simultaneously with this adoption, elsewhere in this issue of the New Jersey Register, the Department will propose to amend the definition of “routine husbandry practices” to refer to techniques commonly taught by veterinary schools, land grant colleges, and agricultural extension agents for the benefit of animals, the livestock industry, animal handlers and the public health and are employed to raise, keep, care, treat, market and transport livestock. The benefits to the animal and the herd, the need for specific training (for example, a veterinarian), and the humaneness of the practices are core components of the methods taught by those institutions. The Department expects that procedures will be performed consistent with the teachings of those institutions, both as to the procedure itself and the age at which it should be performed. In the interim, the

rule, which requires that knowledgeable individuals perform the procedures given the age, breed, physiologic condition, etc. in a way to minimize pain is appropriate.

N.J.A.C. 2:8-7.7

COMMENT: Delete the entire “Exceptions” section. Exceptions to humane husbandry are unacceptable and unnecessary when humane housing and treatment is provided.

RESPONSE: The Department believes the exceptions are appropriate. The Department believes N.J.A.C. 2:8-7.7(a)1, which permits an exception for animals under the direct care of a veterinarian who can provide a medically supportable written explanation for the condition, is appropriate. The Department notes that veterinarians are licensed by the State Board of Veterinary Medical Examiners and must treat animals within the standard of care in this state and comply with the ethics, standards and laws set forth in N.J.S.A. 45:16-1 et seq. and N.J.A.C. 13:44. The Department believes it is appropriate where an animal is under the care of a professional to defer to the veterinarian’s professional judgment. The exceptions at N.J.A.C. 2:8-7.7(a)2 and 3 mirror Federal law. (Note that N.J.A.C. 2:8-7.7(a)3 has been amended on adoption to delete “and water.” The Federal rule cited indicates water must be available in holding pens. The language was proposed in error.

COMMENT: New Jersey should not rely on an archaic provision of the U.S. Code (49 U.S.C. § 80502) in promulgating regulations relating to transport in

2003, but should promulgate its own regulations relating to the humane transport of farmed animals based on modern science.

RESPONSE: The Department has reviewed scientific resources and has consulted with the New Jersey Agricultural Extension Station regarding transportation of swine and has determined that these rules will not result in inhumane treatment of the animals. Moreover, by adopting the standards set forth by the Federal government related to transportation of animals, the Department will avoid challenge to its rules based on placing an improper burden on interstate commerce.

COMMENT: The USDA has determined that 49 U.S.C. § 80502 and its regulations were written to apply only to transfer by a railcar and that the Twenty-Eight Hour Law does not apply to transport by trucks. At a minimum, the regulations should specify that “vehicle or vessel” includes trucks.

RESPONSE: The Twenty-Eight Hour Law, 49 U.S.C. § 80502, does apply to transport by trucks. The law was amended in 1994 to include commercial transport by trucks. Prior to that, the law referred to transport by rail. As such, no change is necessary.

COMMENT: The proposed regulations specify that “nothing herein shall prohibit the confinement of swine in holding cages or pens where food and water may be withheld for up to 24 hours in accordance with 9 C.F.R. 313.2.”

RESPONSE: The Department is aware that 9 C.F.R. 313.2 states that animals shall have access to water. The wording in the proposed rule was in error and has been corrected on adoption to delete “and water.”

COMMENT: The proposed standards would allow animals to be held in a pen or cage without food for 24 hours followed by 28 hours without either food or water. All animals may be confined for 36 consecutive hours upon the request of the owner or person having custody of the animals. This is excessive.

RESPONSE: The rule at N.J.A.C. 2:8-7.7(a)3i states that the time spent in a vehicle or vessel shall not be included in determining the 24-hour period of confinement. As such, animals would not be without food for that period. The commenter states animals may be confined for 36 hours at the request of the owner. The commenters referring to 49 U.S.C. 80502(a)(3)(B) which permits the 28-hour period to be extended upon request. Because the Department's rule refers to Federal law, it is possible that there will be occasions where such a request is made. The Department will not promulgate a rule that contradicts Federal law in this area.

COMMENT: The current draft regulation's failure to meet the voluntary and minimal standards being followed by producers supplying major fast food chains is entirely arbitrary and unjustified.

RESPONSE: The Department disagrees that its use of a standard different from voluntary, best management practices currently followed by some producers in response to requests from fast food industry is "entirely arbitrary and unjustified." In formulating its standards, the Department reviewed over 400 sources including university publications, textbooks, scientific articles, government guidelines and industry standards. While some producers may choose to adopt such voluntary standards for their own operations, the Department has determined that the

standards of these regulations draw an appropriate base line for humane treatment of swine. To the extent producers choose to follow best management practices, the Department encourages them to do so.

Enforcement

General

COMMENT: The Department of Agriculture, whose personnel have the education, training and expertise to deal fairly with any complaint relative to the health and welfare of food producing animals, should oversee enforcement of these standards.

RESPONSE: The statement accompanying the legislation which directed the Department to develop and adopt rules and regulations governing enforcement of these standards, specifically referenced continued enforcement of animal cruelty laws by NJSPCA and county SPCAs in cooperation with the Department. The Department stands ready to assist in the enforcement of the rules and has provided for law enforcement authorities to request assistance from the Department's Certified Livestock Inspectors.

COMMENT: The SPCA should be provided with monetary and human resources needed to better do their job.

RESPONSE: The commenter's suggestion is beyond the scope of this rulemaking.

COMMENT: Commenter expressed concern that the State has transferred responsibility for inspections to a private party, namely the NJSPCA, and

questioned the ability of anyone other than a veterinarian with experience with the specie in question to conduct an inspection of a farming operation.

RESPONSE: Investigation of cruelty violations and enforcement actions must be accomplished consistent with State and Federal law. The rules implement P.L. 1995, c. 311, which contemplated continued enforcement actions by societies for prevention of cruelty to animals. The rules state that the Department may refer veterinarians experienced with the species in questions to provide such expertise to law enforcement authorities upon request.

COMMENT: Commenter expressed concerns that allowing officials of the NJSPCA or county SPCAs, with minimal training related to larger/farm animals or knowledge about biosecurity constraints and the transmission of infectious diseases unfettered access to New Jersey's farms, puts the livelihood of the State's pork producers, the health of their herds and the health of the U.S. swine herd at risk.

RESPONSE: The rule sets forth specific biosecurity protocols to prevent the introduction and spread of disease (N.J.A.C. 2:8-8.1(c)) and requires notification of complaints involving illness, injury or death to be reported to the State Veterinarian immediately or within 48 hours (N.J.A.C. 2:8-8.1(d)). The Department will facilitate training to all potential investigators in these areas to protect the State's livestock from contagious, infectious disease outbreaks and thereby mitigate the situation contemplated by the commenter.

COMMENT: Commenter expressed concerns that the inadequate knowledge and training of SPCA employees regarding modern swine management practices

poses a threat to New Jersey's pork industry. These employees are given full license to inspect, enforce and make "determinations" about New Jersey's swine farms without being accountable to agriculture experts in the New Jersey Department of Agriculture. The commenter believes that this opens the door for potential harassment of New Jersey's pork producers who may have science-based production practices with which the NJSPCA does not agree.

RESPONSE: The Department notes that investigations of cruelty violations and enforcement actions must be accomplished consistent with State and Federal law. Currently in New Jersey, animal cruelty laws may be enforced by law enforcement authorities or State or county SPCAs. The Department will facilitate training and provide staff with expertise in animal agriculture to assist law enforcement authorities and SPCAs when unfamiliar with these facilities.

COMMENT: Commenter asks whether there is a provision to ensure that the NJSPCA will not harass New Jersey farmers because the organization may have an opposing philosophy on the use of animals to provide meat, milk and fiber.

RESPONSE: The Department has developed its standards so that farmers and law enforcement and the State and county SPCAs will have appropriate guidance to determine whether acts of cruelty are occurring. The rules' provisions for enforcement, including efforts to obtain consent before an inspection and the sharing of information with the Department regarding investigations, are designed to implement the Legislature's directive that the societies work cooperatively with the Department to ensure the standards are met. Law enforcement entities and the

State and county SPCAs are obligated to exercise good faith in their enforcement activities.

COMMENT: The regulations limit existing SPCA and law enforcement authority to investigate and prosecute cruelty violations and impose unnecessary procedures as an intentional effort to prevent meaningful enforcement of humane farming standards.

RESPONSE: The Department does not agree that the investigative and enforcement scheme created by its rules limits or prevents meaningful enforcement of humane farming standards. Rather, by creating mechanisms that require sharing of information, the cooperative relationship envisioned by the Legislature when it enacted P.L. 1995 c. 311, will be realized.

COMMENT: The standard for the humane treatment of domestic livestock has been set so low in these proposed regulations that it seems it would be impossible for anyone to obtain prosecution or to challenge your state laws on routine uses of domestic livestock.

RESPONSE: As noted throughout these Responses, the Department has set baseline standards below which treatment would be considered inhumane. The Department is confident that enforcement officials will be able to identify behaviors that fall below the articulated standards and prosecute accordingly.

COMMENT: These guidelines will severely limit the ability of our organization to protect our livestock.

RESPONSE: In developing these standards, the Department has received input from scientists, educators, veterinarians and the State Society for Prevention of Cruelty to Animals. By enforcing these standards, particularly those relating to biosecurity protocols, the commenter's ability to protect livestock will be enhanced.

COMMENT: The regulation should be redrafted in consultation with the NJSPCA, county SPCAs and local law enforcement officials that are familiar with existing procedures for investigating and enforcing the cruelty code and the special needs of law enforcement.

RESPONSE: Investigation of cruelty violations and enforcement actions must be accomplished consistent with State and Federal law. The Department believes its rules implement P.L. 1995, c. 311, and are consistent with State and Federal law. The Department also notes that NJSPCA was involved in the drafting of the rules.

COMMENT: The regulations exceed the authority delegated to the Department. They interfere with criminal law enforcement by SPCAs.

RESPONSE: P.L. 1995, c. 311, directed the Department to adopt rules and regulations governing enforcement of the standards it developed for the humane raising, keeping, care, treatment, marketing, and sale of domestic livestock. The statement accompanying the bill provided: "It is the intent of this bill that it should be construed to allow the New Jersey Society for the Prevention of Cruelty to Animals and its district (county) Societies, in cooperation with the Department of Agriculture, to continue in the SPCA's statutory capacity to enforce the State's

animal cruelty laws.” [Statement to Senate Bill 713, L. 1995, c.311 § 1 (emphasis added)]. The Department’s rules implement that mandate by establishing protocols for inspections that recognize biosecurity protocols (N.J.A.C. 2:8-8.1(c)); provide for the manner in which complaints are to be shared with the Department (N.J.A.C. 2:8-8.3 and 8.6); procedures for inspecting premises and records (N.J.A.C. 2:8-8.5); and the actions that may be taken on violations or other acts of cruelty (N.J.A.C. 2:8-8.7). Rather than interfere with the statutory authority of SPCAs to seek redress for violations, the rules will facilitate appropriate prosecutions by State and county SPCAs while providing the Department with information on treatment of domestic livestock which the Department will use to fulfill its mission, including prevention or containment of disease.

COMMENT: Commenter suggests the Department maintain and publish a list of persons who violate animal cruelty laws.

RESPONSE: To the extent that complaints involve domestic livestock, the rules direct that complaints and complaint resolution be forwarded to the Department. That information will be maintained in accordance with the Department’s record retention schedule and released in accordance with the Open Public Records Act.

COMMENT: Commenter notes that after animals are confiscated, humane organizations and SPCAs lack appropriate facilities. Commenter offers suggestions for addressing the problem.

RESPONSE: N.J.S.A. 4:22-26.1 states that an officer or agent of the N.J. Society for Prevention of Cruelty to Animals or a certified animal control officer may petition a court of competent jurisdiction to have the animal forfeited or confiscated. The court, upon a finding that continued possession by that person poses a threat to the animal's welfare, may adjudge the animal forfeited for such disposition as the court deems appropriate. The Department agrees that adequate facilities should be available and trusts that courts take that factor into consideration when entering an order.

COMMENT: Commenter supports rules, particularly where they direct use of veterinarians who are highly trained in the care and treatment of animals, to determine what practices constitute humane treatment.

RESPONSE: The Department agrees that veterinarians are particularly well suited to assess animal welfare. The statutory scheme, however, contemplates continued enforcement by SPCAs, animal control officers, and other law enforcement authorities. In order to assist those enforcement personnel perform their investigations with particular knowledge, the Department has created the position of certified livestock inspector to provide expertise throughout the state whenever needed.

COMMENT: In South Dakota, we have had problems with our complaint procedures, similar to yours, being a venue for neighborhood feuds.

RESPONSE: The Department agrees that unsubstantiated complaints may be initiated by individuals for purposes other than those concerning animal welfare.

COMMENT: The State Veterinarian from South Dakota stated that experience has shown that veterinarians are the only people who have the expertise to truly render judgments on inhumane treatment and expert judgment and opinions by veterinarians make much more convincing justification for inhumane treatment than do any formal guidelines or standards.

RESPONSE: The Department recognizes the value of the judgment of professionally trained veterinarians in determining whether actions are considered inhumane and has received advice from such doctors of veterinary medicine in formulating its rules. The Department has developed its rules in a manner consistent with the Legislatures directive as found in N.J.S.A. 4:22-16.1

COMMENT: Only full-time local law enforcement agencies function well as investigators and then they most often consult our state animal health agency for expert opinion and guidance. After years of administering the inhumane treatment standards, two things stand out as pertinent: 1) It is very time consuming and requires a lot of professional judgment; and 2) The rules describing the disposition of impounded animals are burdensome, as the final disposition is generally wanted by the courts prior to issuing order for impoundment.

RESPONSE: The Legislature directed the Department to develop “rules and regulations governing the enforcement” of the standards for humane treatment of domestic livestock. The law retained authority for SPCAs to continue their law enforcement role along with other enforcement personnel (police, sheriffs, animal control officers). The Department has written rules to provide guidelines to be

employed in the exercise of judgment of such officials and to allow the Department to fulfill its mandate.

COMMENT: Commenter expresses concern that the rule gives the State Veterinarian too much arbitrary authority in the enforcement of the rules. The rule appears to allow the State Veterinarian sole discretion as to whether or not an investigation will be made and who will do the investigation. There should be a clear policy that determines that investigations will occur when certain evidence is presented and that the inspections should be performed by people outside the purview of political appointees.

RESPONSE: The commenter appears to have misread the rule's provisions. The rule does not vest sole discretion in the State Veterinarian as to when or by whom investigations will be made. Rather, the rule recognizes that complaints may be made by any person including the Department, NJSPCA, county SPCAs or other State or local government authority (N.J.A.C. 2:8-8.3 and 8.7). The Department expects that persons vested with authority to enforce and/or oversee the regulations will do so consistent with the law and regulations and without political interference.

N.J.A.C. 2:8-8.1(b)1

COMMENT: This section should be amended to include the NJSPCA and county SPCAs in any training sessions. The SPCA should be involved in the preparation and presentation of any and all training sessions on how to apply and interpret the new standards and procedures.

RESPONSE: The rule provides that any interested party may request training on how to interpret the rules and that the Department and Cook College, New Jersey Agricultural Extension Station, will jointly prepare and conduct training. That is consistent with N.J.S.A. 4:22-16.1, which requires that the Department consult with the Agriculture Extension Station in developing the standards. The Department encourages and welcomes all SPCA personnel to attend the training sessions. The Department will gladly receive suggestions from the SPCAs regarding training matters.

COMMENT: The proposed standards allow “any interested party” to “request training on how to interpret” the standards and do not make such training mandatory. This proposed rule would work at cross-purposes with the Legislature’s explicit interest in seeing farm animals treated humanely. Instead, training should be required not only for farm animal owners/custodians, but also for any driver of an animal transport.

RESPONSE: The Department will make its training sessions available, not just for owners/custodians and transporters but for enforcement personnel as well. The rules provide baseline standards for treatment of animals and the Department encourages people to take advantage of information.

N.J.A.C. 2:8-8.1(c)

COMMENT: Commenters object to the biosecurity protocols as excessive, onerous, and impractical and state they will deter or impede enforcement actions.

RESPONSE: The Department has developed its biosecurity protocols in recognition of serious consequences that result from the transmission of infectious diseases. Because the effects of diseases could simulate results of actions of animal cruelty, in the absence of a definitive diagnosis by a veterinarian, the biosecurity protocols will avoid the inadvertent transmission of contagious diseases. The Department notes that these biosecurity protocols are part of management practices already in place on many farms in this State.

COMMENT: The proposed standards inappropriately require the performance of various biosecurity measures, including comprehensive cleaning and disinfecting, at the commencement of every investigation, whether applicable or not. These measures should instead be discretionary, with greater concern shown for the preservation of evidence.

RESPONSE: Biosecurity protocols have been developed by the Department for all inspection personnel visiting farms. As noted above, where infectious contagious diseases are present resulting in conditions that may appear to be the result of cruelty or neglect, if these biosecurity precautions were not followed, more animals would be exposed to the infectious agent, resulting in more harm to the animals so exposed. Since the determination of cause of condition cannot be made until an investigation is complete, biosecurity measures should always be employed to protect the health and well-being of the animals as well as humans involved. The Department does not agree that the requirements should be discretionary. Further, the rules will not negatively impact on the preservation of evidence. Samples may be collected as necessary.

N.J.A.C. 2:8-8.1(c)2

COMMENT: This section should be amended to delete the requirement that each animal species in a single facility be treated as a “different site.”

RESPONSE: The Department’s rule was formulated in consultation with the New Jersey Agriculture Extension Station based its expertise and knowledge of domestic livestock and the types of diseases and manners of transmission. The rule addresses the health of the animals, their handlers, enforcement personnel, and the public. The rule’s requirement is appropriate.

N.J.A.C. 2:8-8.1(c)3

COMMENT: This section should be revised to omit any requirement that new and/or disposable protective equipment be disinfected on arrival.

RESPONSE: The rule requires protective clothing (clean clothing or disposable) be worn at each site and requires equipment to be cleaned and disinfected on arrival and prior to leaving the site. To the extent the equipment is new and arrives at the facility in a clean and sanitary manner, it would not need to be disinfected. The Department will propose an amendment the regulation to reflect this exception, published elsewhere in this issue of the New Jersey Register.

N.J.A.C. 2:8-8.2(b)

COMMENT: Between “experiencing” and “extraordinary,” insert “unpredictable and unavoidable.”

RESPONSE: The definition of “Extraordinary or catastrophic conditions” means an act or event exclusively characterized by an unanticipated, grave, natural or man-made disaster, which occurs without input or fault by the owner, and which is of sufficient magnitude to excuse compliance with these rules. For example, this could include acts of bioterrorism or hurricanes. As such, the addition of the suggested terms is not necessary.

COMMENT: The rule should require back up systems to ensure the animals’ well being during catastrophic conditions and emergency management plans must be developed and practiced.

RESPONSE: The Department has not required back up systems or emergency plans at this time. However, the rule requires that all life supporting mechanical equipment shall be inspected at least once daily and maintained in functioning order. Although power outages may be beyond the control of individual producers, the Department requires an environment that supports animal health and expects producers to have emergency plans that would be employed to the best of their ability when needed.

COMMENT: The provision should be revised to modify or eliminate the exceptions: “shall be deemed to be cruel and inhumane in the care of animals, except when experiencing extraordinary or catastrophic conditions, or as otherwise provided by these rules” since they are redundant or internally inconsistent.

RESPONSE: The Department disagrees that the exception for extraordinary or catastrophic conditions should be eliminated. As noted above, the definition contemplates “an unanticipated, grave, natural or man-made disaster.” In such circumstances, the Department expects owners, transporters and agents to take appropriate steps to protect the health, safety and welfare of the public, themselves, and the animals. To the extent they are unable to meet all standards set in the rules, an assessment of the situation will be made on a case-by-case basis in light of the circumstances. The Department also disagrees that the language is redundant or inconsistent. Each section details specific exceptions to some standards (for example, N.J.A.C. 2:8-3.7(a)1, horses under direct care of a veterinarian who can support the condition). Those sections do not address catastrophic conditions.

COMMENT: The definition of “extraordinary or catastrophic conditions” is vague and meaningless, is circular reasoning that results in unenforceable rules.

RESPONSE: The Department disagrees that the terms are vague or meaningless or will result in unenforceable rules. Words are given their commonly understood meaning. The definition specifies that the conditions may not have been caused by the owner, that they must be grave and unanticipated. Whether an exception to the standards should be recognized will be on a case by case basis. The Department expects that owners will prepare for certain weather conditions (for example, periodic flooding), but notes that even best prepared farms cannot anticipate every possible man-made or natural disaster (for example, act of bioterrorism). Subjecting farmers to civil or criminal prosecution for inhumane

treatment in such circumstances would be inappropriate. The Department, in cooperation with State and Local law enforcement, works with the State Office of Emergency Management in instances of extraordinary or catastrophic conditions. The Department believes these terms are understood in the State.

COMMENT: The final regulations must define exempted conduct in a manner that clearly explains exactly the particular circumstances under which otherwise cruel or inhumane conduct will be excused.

RESPONSE: As noted above, the Department has chosen to limit extraordinary and catastrophic conditions. The rule provides an appropriate definition for the finder of fact to determine whether compliance with the rule should be excused.

COMMENT: The exemption “except when experiencing extraordinary or catastrophic conditions, or as otherwise provided by these rules” attempts to determine how and when law enforcement can act which is beyond the scope of these regulations.

RESPONSE: The Department disagrees that its exception for extraordinary and catastrophic conditions attempts to determine how and when law enforcement can act. The Department’s rules set standards for feeding, watering, transporting, caring for and treatment of animals and provides limited instances where those standards, when not met, will not be deemed cruel and inhumane treatment. Enforcement of these rules, including the determination as to whether standards have been met and, if not, whether extraordinary and catastrophic conditions exist which would provide a defense to the failure to meet these standards, is a question

of fact. The Department expects that law enforcement personnel and the NJSPCA and county SPCAs will continue to fulfill their mandates consistent with the law.

N.J.A.C. 2:8-8.2(d)

COMMENT: The proposed regulations should be revised to set forth precise State humane slaughter laws to include protections to chickens and to consider alternatives to ritual or kosher slaughter as permitted in the Federal Humane Slaughter Act.

RESPONSE: Through enactment of P.L. 1995, c. 311 (N.J.S.A. 4:22-16.1), the Legislature directed the Department, in connection with the New Jersey Agricultural Experiment Station, to develop and adopt standards for the humane raising, keeping, care, treatment, marketing and sale of domestic livestock. Slaughter of animals, as referenced by the commenter, is governed by the Humane Slaughter Act. The Department has not addressed the methods of slaughter except to note that slaughter of an animal consistent with the Federal law may be considered an appropriate method of euthanasia. While slaughter of chickens is not governed by the Humane Slaughter Act, the Department notes that 9 C.F.R. Part 381 addresses some concerns about humane slaughter of poultry and FSIS Directives 6900.1 and 6900.2 clarify the Humane Slaughter Act, including specifics on ritual and kosher slaughter. The Department believes establishing rules relating to slaughter of chickens or to alternatives to ritual or kosher slaughter is beyond the scope of the Legislature's directive.

N.J.A.C. 2:8-8.3(a)

COMMENT: “Under 2:8-8.3, the proposed regulations state that complaints or allegations of animal cruelty can be made to Certified Livestock Inspectors (CLI), or officers of the SPCA, Animal Control Officers, other local or state authorities or private individuals. Since CLIs are not law enforcement officials and have no express law enforcement powers, they cannot substitute themselves as such. Additionally, there is no requirement under these proposed regulation that the police or a SPCA law enforcement official be notified if a crime is reported.” (Emphasis added.)

RESPONSE: The commenter has misquoted the regulation and in doing so has misunderstood its meaning. N.J.A.C. 2:8-8.3 provides that “complaints or allegations of animal cruelty may be made by any person including but not limited to, CLI, officers of the SPCA, Animal Control Officers, other Local or State authorities, or private individuals.” (Emphasis added). The rule refers to complaint by persons, not complaints to persons. CLIs, or certified livestock inspectors, will conduct inspections on behalf of the Department and at the request of an SPCA, may be assigned by the State Veterinarian to investigate a complaint. (N.J.A.C. 2:8-8(b)1). Any person, not just one with particular law enforcement powers, may make a complaint. The Department does not understand the term “cannot substitute themselves as such.” If, however, the commenter is concerned that CLIs not hold themselves out as law enforcement officials, the Department will ensure that the individuals it credentials as CLIs understand their responsibilities in connection with these rules. Finally, the Department notes that N.J.A.C. 2:8-8.7(a)3iv requires that after a written warning has been issued for a

minor violation, an official or authority shall advise other authorities of the action taken. N.J.A.C. 2:8-8.7(b)3 requires the State Veterinarian to request action be taken for a continuing severe violation by the SPCA, ACO or other State or local authority.

N.J.A.C. 2:8-8.3(a)

COMMENT: Commenter expressed concern for the potential for inspections not warranted by any wrongdoing. Currently, the SPCA is contacted when concerns arise from witnesses about a neglectful or abusive situation. The investigation is justified. I cannot support the writing of any decree that allows all private citizens to have their property inspected without just cause. This is still America and people are allowed to own their property and that includes their animal property.

RESPONSE: The Department, pursuant to the Legislature's mandate, is promulgating rules to set standards for the humane treatment of animals and for enforcement of those standards. For several decades, the State has recognized that animals, while property, should not be subjected to cruelty. Individuals have reported acts of cruelty by private citizens toward animals owned by those citizens. Pursuant to these rules, complaints or allegations of animal cruelty may be made by any person including, but not limited to, private individuals, CLIs, officers of the SPCA, Animal Control Officers, or other local or State authorities. Inspections based on those complaints will frequently be done with consent of the owner. Where specific circumstances exist, prior consent may not be necessary before seeking a warrant to inspect the premises. Further, the rules provide for the type of information exchange that will enhance enforcement efforts among

entities charged with that responsibility. Although the Department shares the commenter's concerns that complaints may on occasion be erroneously filed, protection of animals is an important public interest. The Department will not limit the public's ability to submit complaints.

N.J.A.C. 2:8-8.3(b)

COMMENT: Commenters believe complaints should not be required to be in writing as that practice imposes "unnecessary formality and paperwork on enforcement authorities" and "erects a significant barrier that will discourage the public from alerting authorities to potential violations." They suggest complaints be received by fax, email, or phone.

RESPONSE: In proposing the rule, the Department stated that all complaints should be in writing but allowed for phone, fax and email of complaints rather than requiring a written complaint where there appeared to be imminent danger to the animal or the public health, safety and welfare or where the complainant was incapable of complying with the requirement. The Department believed its rule would assist the NJSPCA, county SPCAs and other State and local government authority in tracking complaints concerning cruelty or neglect. The Department did not intend to create barriers regarding allegations of animal cruelty. The Department, therefore, will amend the regulation on adoption to permit alternative formats and to ensure that appropriate data are collected so these rules may be appropriately enforced and information shared to the extent provided by law. While the change is substantive, the Department does not believe it requires reproposal because this change furthers the purpose of the rule, will have a

positive impact on the animals, and is less restrictive than that originally proposed.

N.J.A.C. 2:8-8.3(d) and (e)

COMMENT: The term “must” in N.J.A.C. 2:8-8.3(d) should be replaced with “should” to read that all complaints should include certain information; and N.J.A.C. 2:8-8.3(e) that states that a complaint without adequate information may be rejected should be deleted. Every effort should be made to obtain information and to investigate.

RESPONSE: The rule states that “complaints must identify as completely as possible”: dates, unique characteristics of the livestock, current location and location of the incident if different, description of the alleged acts of cruelty or inhumane treatment. To the extent the complaint, after evaluation, fails to provide sufficient information to initiate investigation of the complaint, the authority that received it may reject it. The rule, through use of language “as completely as possible,” accounts for those instances where the information may not be available. Clearly the categories listed are relevant and essential in order for an investigation to be conducted. An authority without sufficient information regarding the violation may properly decline to pursue an investigation, but is not required to reject it. The Department notes that law enforcement authorities are called upon every day to make assessments about continuing investigations where little information is available. Those decisions may be based on the nature of the

complaint, the time since the alleged violation occurred (or continues to occur), resources available, etc.

N.J.A.C. 2:8-8.3(f)

COMMENT: The provision that requires any SPCA or State or local authority receiving a complaint to immediately notify and provide a copy of the complaint to the Department should be deleted since this requirement imposes senseless provisions. At a minimum, the Department should be required to report to the SPCA or law enforcement authorities in a similar fashion.

RESPONSE: The Legislature specifically directed the Department to develop humane standards and to develop and adopt rules governing the enforcement of those standards. N.J.S.A. 4:22-16.1. The requirement that the Department be notified of complaints received by investigating authorities is one element that provides the Department with information that will enable it to monitor the standards for enforcement. The rules, at N.J.A.C. 2:8-8.7(a)1iv, contemplate the exchange of information sought by the commenter.

COMMENT: The proposed regulations require that the complaints be submitted in writing to the Department, NJSPCA, etc. The idea of requiring written complaints of a crime having been committed to be sent to the Department and not the police or a SPCA law enforcement official is unheard of and is in contradiction to normal criminal procedure. There is no requirement that the Department send any reports of alleged crime to law enforcement.

RESPONSE: As noted earlier, for minor violations, officials and authorities taking action are obligated to notify other authorities. N.J.A.C. 2:8-8.7(a)2iv. Where there is a severe, continuing violation, the State Veterinarian shall request that the SPCA, ACO or other authority take action. N.J.A.C. 2:8-8.7(b)3.

COMMENT: Under N.J.A.C. 2:8-8.3(f), the NJSPCA and county SPCAs and other State and local government authority shall, whenever possible, provide notice to the State Veterinarian of its intent to inspect the location of domestic livestock. There is no regulation concerning the Department's responsibility to notify law enforcement.

RESPONSE: The Department has promulgated this rule in recognition of the seriousness of a situation where diseases may be transmitted by persons who are unfamiliar with the need for biosecurity protocols as well as the need for reporting of diseases which may present as cruelty. The Department possesses expertise in this area. As noted above, the rules require sharing of information on violations.

COMMENT: In addition to being beyond the authority of this agency, all these proposed rules regarding enforcement of animal cruelty will create confusion with regard to reporting and investigating animal cruelty. Thus, it will make the enforcement of these laws more difficult.

RESPONSE: The Department disagrees that its reporting requirements will create confusion. The rules are straightforward concerning the information to be transmitted to the Department which can use data to assist in the prevention of transmittable diseases. The Department wishes to work cooperatively with law

enforcement and the NJSPCA and county SPCAs to facilitate, not hamper, enforcement.

COMMENT: It is apparent that N.J.S.A. 4:22-16.1 was never intended to preempt the authority of law enforcement and the SPCA. This is evidenced by the statement accompanying the bill; Senate 713, P.L.1995, c. 311, sec. 1, which clearly states that the intent of the bill is that it should be construed to “allow the NJSPCA and its district societies, in cooperation with the Department of Agriculture, to continue to enforce the State’s animal cruelty laws.” These proposed regulations are not following the intent of the statute.

RESPONSE: The Department disagrees with commenter’s contention. The Department has, consistent with the statute, recognized the ability of the NJSPCA and its district societies to continue to enforce the State’s animal cruelty laws. As the commenter points out, the Legislative intent is that, as to domestic livestock, those entities are to do so “in cooperation with the Department of Agriculture.” These rules strike that balance.

COMMENT: Commenter objects to NJSPCA and county SPCAs conducting investigations stating that personal philosophy and political agendas might enter into an otherwise objective regulatory process. Modern animal production systems are diverse, complex biological systems that do not lend themselves to understanding by untrained and inexperienced inspectors. The proposed regulation is silent as to the expertise needed by personnel conducting the investigations.

RESPONSE: The authority of the NJSPCA and county SPCAs to enforce the animal cruelty laws is statutory. Moreover, the legislative history demonstrates that the law is to be construed to allow such societies in cooperation with the Department to continue that function. The Department agrees that animal agriculture systems are diverse, complex biological systems. The Department's rules for enforcement take that into consideration as evidenced by biosecurity guidelines (to protect the farm animals, wildlife, and the public) and the recognition of certified livestock inspectors who are available to the Department and to SPCAs to assist in investigative tasks. As noted throughout the Responses, the Department will facilitate training of persons charged with enforcing these rules.

COMMENT: The commenter asserts that veterinarians are the only professionals with education and training in both animal health and welfare. The commenter urges the Department to use veterinarians with on farm experience in production settings to conduct investigations, stating that the use of inexperienced and untrained personnel will not accomplish intended goals and may be counterproductive to animal welfare.

RESPONSE: As noted above, the Legislature has confirmed the role of county SPCAs and the NJSPCA in enforcement of animal cruelty laws. The Department will assist those entities through training for those who will perform such functions and through the availability of CLIs whose particular experience will provide the knowledge appropriate to various situations.

N.J.A.C. 2:8-8.3(g)

COMMENT: The provision that requires the SPCA or State or local authorities to provide notice to the State Veterinarian of its intent to inspect livestock facilities should be deleted or at minimum replaced with “should” and make the requirement mutual for the NJDA. This requirement will hamper enforcement authorities and the only reason for this requirement is to allow the NJDA to keep tabs on the SPCA and other investigating authorities.

RESPONSE: The requirement that the Department be notified whenever possible of inspections for livestock facilities is appropriate. Rather than “to keep tabs” on investigating authorities, the information will assist the Department in its charge to monitor diseases that may be present on a farm, which diseases may present as possible cases of neglect or substandard care. Moreover, should an enforcement authority require assistance, the Department, having been so notified, will be able to respond more readily. The Department declines to impose a requirement it should notify the SPCAs of intent to inspect as the Department inspects/monitors farms pursuant to its statutory authority (for example, disease investigations, quality assurance programs). Where a violation of the standards has been found, the rules contemplate that the Department will notify other authorities (N.J.A.C. 2:8-8.7(a)2iv and 8.7(b)3).

N.J.A.C. 2:8-8.4(d)

COMMENT: Replace the CLI shall investigate “as soon as is reasonably practicable” with “within 24 hours.”

RESPONSE: The Department's rule requires that CLIs investigate all complaints received by the State Veterinarian as soon as reasonably practical. The rule provides discretion to the State Veterinarian to evaluate the nature of the complaint and make assignments based on the seriousness of allegation and availability of personnel with particular expertise to investigate. Investigations may, in fact, be undertaken within 24 hours. The rule appropriately recognizes the need for administrative flexibility and discretion as exercised by the State Veterinarian.

N.J.A.C. 2:8-8.4(e)1

COMMENT: The proposed rule permitting a Certified Livestock Investigator to "appoint a representative of his choosing..." would likely result in the performance of inspections by untrained individuals, placing in jeopardy millions of animals.

RESPONSE: The Department proposed the rule to permit limited inspections to be performed at the direction of the CLI in order to decrease response time for the investigations. CLIs would remain responsible for all aspects of the investigation. The Department expected that CLIs, who are veterinarians, animal health technicians, or investigators with the Department, or the USDA, APHIS, would have the appropriate training to determine what task could be properly delegated without negatively impacting any aspect of animal health or welfare or the investigation. (For example, a CLI might ask another employee in the Department to inspect a farm to see if water was available). The Department recognizes that

its rule did not describe those expectations and as such has not sufficiently limited the discretion of the CLI. The Department is not adopting N.J.A.C. 2:8-8.4(e), at this time, but is reserving the paragraph pending further consideration.

N.J.A.C. 2:8-8.4(g)

COMMENT: The AVMA's Guidelines on the Identification of Board-Certified Veterinarians suggest that only veterinarians who have been certified by an AVMA-recognized specialty organization should refer to themselves as specialists. In keeping with this belief, we suggest that related language in the proposed rule be modified as follows:

“A certified CLI shall only investigate complaints regarding those species of domestic livestock with which the State Veterinarian determines he or she has sufficient demonstrated experience. 1. The State Veterinarian shall find that a CLI has demonstrated sufficient experience upon finding that ...”

RESPONSE: The Department acknowledges that the terms specialty/specialists are used by veterinarians who have been certified by an AVMA recognized specialty organization and the term is restricted by the New Jersey State Board of Veterinary Medical Examiners (N.J.A.C. 13:44-4.8(c)3). The rule was not intended to limit the pool of CLIs to Board certified specialists. The Department intended the rule to reflect that persons possess knowledge and experience related to the relevant species. As such, on adoption, the Department will amend the language to clarify that the CLI shall demonstrate sufficient knowledge and

experience as to the type(s) of animals to be investigated and will delete “specialty” from N.J.A.C. 2:8-8.4(g) and (g)1.

N.J.A.C. 2:8-8.5(a) through (c)

COMMENT: Commenters object to N.J.A.C. 2:8-8.5 which sets forth procedures for obtaining inspections of premises or records, asserting that the rule is confusing and that requiring consent will delay or prevent effective investigation.

RESPONSE: The Department disagrees with commenters. The rule addresses procedures to be followed for inspections. The first (N.J.A.C. 2:8-8.5(a)) requires investigating authorities to make reasonable efforts to contact persons responsible for the animals to obtain consent for inspection of the animal or records pertinent to the alleged violation. The second (N.J.A.C. 2:8-8.5(b)), if consent cannot be obtained, requires that the investigating authority to seek a warrant. N.J.A.C. 2:8-8.5(d) identifies an exception to the requirement that the investigating authority try to obtain consent before seeking a warrant. The Department’s rule recognizes that in the absence of consent, warrants are generally required before searches may be undertaken. The Department believes that N.J.A.C. 2:8-8.5(d), which specifically excludes the requirement to obtain consent before seeking a warrant where animals’ lives are in imminent peril, that it would be fruitless to pursue a request for voluntary inspection, that there is a possibility that animals will be moved if advance notice is given or that a consensual inspection is not otherwise practical, provides appropriate flexibility and guidance to investigating authorities

who reasonably believe that requesting consent would delay or prevent an effective investigation.

COMMENT: Commenters assert that the rule improperly interferes with law enforcement and normal criminal investigations and is contrary to criminal procedure as warrantless searches should be permitted where exigent circumstances exist.

RESPONSE: The rule applies to investigation of complaints alleging the cruel and inhumane treatment of domestic livestock. Those investigations may result in civil or criminal enforcement actions. Law enforcement agencies as well as the NJSPCA and county SPCAs have statutory authority to conduct those investigations. N.J.S.A. 4:22-44b specifically authorizes any members, officer or agent of the NJSPCA, or any sheriff, undersheriff, constable, certified animal control officer or police officer to make arrests without a warrant in instances where the violation occurred in the presence of such individual. (N.J.S.A. 4: 22-44a permits arrests for violations, presumably with a warrant, in cases where the violation has not occurred in the presence of that person). N.J.S.A. 4:22-26 provides: “Any court having jurisdiction of violations of the law in relation to cruelty to animals may issue warrants to enter and search buildings or places where it is reasonably believed that such law is being violated.” N.J.S.A. 4:22-47 appears to provide for an exception to the need for a warrant to arrest and permits entry into a building or place where there is an exhibition of the fighting or baiting of a living animal or creature. The Department’s rule followed the specific

parameters set forth in the statute regarding search warrants. (The Department did not seek to codify the exception for fighting or baiting animals).

To the extent commenters believe the rule requires an attempt at obtaining consent prior to seeking a warrant, they ignore the plain language of N.J.A.C. 2:8-8.5(b): “If the investigating authority is unable to obtain consent for an adequate and timely inspection” and the language of N.J.A.C. 2:8-8.5(d) which permits the investigating authority to dispense with the attempt to obtain consent. Both subsections permit the investigating authority to apply for a warrant. To the extent that searches without warrants may be appropriate, law enforcement authorities may properly exercise their functions consistent with the State and Federal constitutional restrictions on searches and seizures of private property. The Department cannot delineate the circumstances where such searches may be valid, but notes that courts would likely assess such circumstances on a case by case basis, given factors such as the nature and degree of the violation and the reasonableness of the officer’s conduct. The Department will examine the issue further and will propose an amendment to the rule in the near future to reflect such an exception to the requirement that a warrant be obtained may exist.

COMMENT: The language in N.J.A.C. 2:8-8.5(d) is confusing as it combines the concept of exigent or emergent circumstances with the need to obtain a warrant.

RESPONSE: As noted above, the Department in N.J.A.C. 2:8-8.5(d) outlined circumstances where the efforts to obtain consent for a voluntary inspection are not required (for example, animal’s life in imminent peril; fruitless to pursue a

request; animals will be moved; not otherwise practical). The language “if emergent circumstances require that the inspection occur immediately,” was intended to reiterate the examples provided in the section. After reviewing the comments, the Department understands the confusion cited by the commenters. As noted above, the Department’s proposal did not address warrantless searches or the “exigent circumstances” exception to the warrant requirement. N.J.A.C. 2:8-8.5(d) gives guidance to investigating authorities when conditions exist that would excuse the need to attempt to obtain consent for inspections and to apply for a warrant. Because the Department will propose an amendment to address the issue of warrantless searches and because the phrase “if emergent circumstances require that the inspection occur immediately,” is redundant, and because it will likely contribute to confusion in the enforcement of these rules, the phrase has been deleted in adoption.

COMMENT: The rule should provide for regular inspections without a warrant to ensure industry is in compliance with standards. Without such regular inspection, it will be impossible to ascertain compliance.

RESPONSE: The suggested inspection scheme is beyond the scope of the rulemaking. The Department is unaware of any legislative authority that would authorize State or county SPCAs or other law enforcement authorities to conduct such inspections on a routine basis and in the absence of an allegation of a violation of the animal cruelty statutes.

N.J.A.C. 2:8-8.5(e)

COMMENT: The proposed standards do not permit the seizure of animals. Both to safeguard the animals' well-being and to preserve the evidence that the animals may embody, seizure must be permitted.

RESPONSE: The Legislature has set forth specific circumstances under which law enforcement may take charge of animals. Those instances include N.J.S.A. 4:22-47 (take possession of all living animals or creatures engaged in fighting); 4:22-50 (when person arrested is in charge of the animal and no one present, other than the person arrested, to take charge of the property); 4:22-50.1 (owner/operator of pound or shelter arrested; seek appointment of receiver); 4:22-52 (taking charge of animals following arrest of person transporting animals in inhumane way); and 4:22-54 (destruction of animal found in disabled condition). The Department will not expand on those circumstances in this rule. The Department notes, however, that there will be occasions where animals must be quarantined to protect the public health and animal health. To the extent that other laws permit or a court directs seizure, it would be permitted. As to preservation of evidence, the Department expects appropriately trained enforcement authorities will have the skills and resources to gather such evidence as necessary.

N.J.A.C. 2:8-8.5(g)

COMMENT: Commenter recommends that the proposed rule be amended to expressly state that any medical records provided in response to a request pursuant to subsection (g) are to be treated as confidential and proprietary records and are to be used only for investigation purposes.

RESPONSE: To the extent that complaints involve domestic livestock, the regulations direct that complaints and complaint resolution be forwarded to the Department. That information will be maintained in accordance with the Departments record retention schedule and released in accordance with the Open Public Records Act. The Department is mandated to comply with the Open Public Records Act which specifies the type of information that is not a public record subject to disclosure and what information must be released upon request.

COMMENT: The proposed regulations go so far as to mandate that an investigating officer shall do certain things.

RESPONSE: The Legislature directed the Department to develop and adopt rules and regulations governing the enforcement of the standards of this rule. N.J.A.C. 2:8-8.5(g) states that an investigating authority conducting an inspection of domestic livestock and premises shall: 1) visit the location where the alleged cruelty occurred or where the animal is currently located; 2) identify the livestock about which the complaint was made; 3) inspect the animal and conditions under which the animal is kept and, if the inspection is conducted by a New Jersey licensed veterinarian, examine the animal; 4) collect necessary site samples and record findings; samples from animals only taken by a licensed veterinarian; 5) request any necessary records; and 6) provide a receipt for any records removed from the site. These are basic elements of an investigation of an animal cruelty complaint. The rule is an appropriate response to the Legislature's directive.

N.J.A.C. 2:8-8.6(a-b)

COMMENT: Commenters object to the requirement that the State Veterinarian be provided with the results of the inspection within 24 hours if the violations severe, and within two business days for all other violations, asserting that the time frames are arbitrary and burdensome.

RESPONSE: The Department determined that the time frames for reporting violations (24 hours for severe and two business days for all others) recognized the need for review of circumstances and presenting signs of affected animals so the Department can evaluate for the presence of disease (for example, foot and mouth disease in sheep can present as lameness and if not diagnosed properly could spread rapidly to other animals and farms). The receipt of investigative reports from different areas indicating similar signs of disease or illness will enable the Department to address potential health issues in a more rapid fashion. The Department on adoption is clarifying the regulation to indicate that the results of the investigation be transmitted within that time frame and that the records required by N.J.A.C. 2:8-8.6(b) may be forwarded within seven days. While these changes are substantive, reproposal is not necessary as the rule change will lessen the burden set by the rules as proposed. The Department believes the time frames are workable and not unduly burdensome on enforcement authorities.

COMMENT: Commenters object to N.J.A.C. 2:8-8.6(b)1 which provides that the records of inspection forwarded to the State Veterinarian include contact information of the complainant as law enforcement should not have to turn over such information to an administrative agency, stating there is “no legitimate reason” for the Department to collect information and only with a court order can

it obtain the information if a witness wished to remain anonymous (citing to N.J.R.E. 516) or if law enforcement wishes to keep the information privileged for investigative purposes.

RESPONSE: The rule provides that current contact information of the complainant, if available, be provided. That, along with information about date, location, observation, etc., gives the Department basic information concerning the nature and results of the inspection. To the extent that the complainant asks the law enforcement authority or an SPCA to keep his or her identity confidential, the law enforcement authority or the SPCA may choose not to provide the complainant's identifying information. To the extent that the Department determines that the information is necessary, it could take appropriate measures to obtain such information. Of course, it is not expected that every complainant will ask that his or her identify be kept confidential. The Department anticipates that law enforcement authorities and the SPCAs will be working cooperatively with the Department as these standards are enforced throughout the State. In order to ensure the availability of evidentiary privileges is clear in the rule, the Department will propose to amend this section in a notice of proposal published elsewhere in this issue of the New Jersey Register.

N.J.A.C. 2:8-8.7(a)

COMMENT: This standard is weaker than the current cruelty-to-animals statute and, in essence, provides producers with a State-sanctioned excuse to neglect their

animals as long as it is their first time doing so. The rule should provide for criminal penalties on first offense instead of a warning.

RESPONSE: The rule reflects the legislative direction that “no person may be cited or arrested for a first offense involving a minor or incidental violation, as defined by the rule and regulations...unless that person has first been issued a written warning.” N.J.S.A. 4:22-16.1(b)2. The rule does not give an excuse to neglect animals but reflects a legislative determination as to when civil or criminal sanctions may be imposed.

COMMENT: The definitions of “minor” and “severe” violations should be revised to reflect the relative suffering rather than addressing only the life or death of the animal. The definition of minor violation should be revised to state that a violation is minor only if it does not cause substantial suffering and is unintentional and severe violation should include any act that causes substantial suffering and any intentional acts of cruelty. Commenters state that minor and severe should be defined by different degrees of criminal punishment

RESPONSE: The Department, elsewhere in this issue of the New Jersey Register, is proposing to amend the definitions of “minor violation” and “severe violation” to clarify the nature of each. Acts of cruelty are severe violations; neglect or unintentional substandards practices which do not place an animal’s life in peril or result in certain conditions are minor violations. N.J.S.A. 4:22-26 sets forth criminal penalties for specific acts of cruelty. Acts which are third degree crimes would be considered severe violations as they are intentional acts of cruelty.

COMMENT: Commenters state that all violations should be considered severe and suggests deletion of N.J.A.C. 2:8-8.6(a)2 and the phrase “for violations considered severe” in N.J.A.C. 2:8-8.6(a)1.

RESPONSE: As noted above, the rule follows the direction provided in N.J.S.A. 4:22-16.1b(2) distinguishing between severe and minor violations. The rule is consistent with legislative intent.

COMMENT: All violations should be considered severe, investigated promptly, and if cruelty occurred, the maximum steps must be taken against the violator.

RESPONSE: The Department has distinguished between minor and severe violations in accord with N.J.S.A. 4:22-16.1. The Department agrees that allegations should be investigated promptly and will make available CLIs to assist law enforcements authorities and SPCAs in those investigations. Determinations of whether to pursue criminal or civil sanctions rests with the law enforcement authorities and SPCAs; courts of competent jurisdiction will render decisions in those actions.

N.J.A.C. 2:8-8.7(a)1

COMMENT: Commenter suggests that letters should be sent as registered mail.

RESPONSE: The rule permits an initial notification to be make in person, by telephone, fax or email (N.J.A.C. 2:8-8.7(a)1i(1)) and if the initial notification was not in writing, the rule requires that the written warning shall be served on the person or mailed to the person’s last known address (N.J.A.C. 2:8-8.7(a)1i(2)).

Because proof of service may be essential to establish receipt of the written warning, sending correspondence by certified mail rather than regular mail is preferable. The Department encourages use of certified mail. The Department will consider an amendment to the rule in the future.

COMMENT: N.J.S.A. 4:22-16.1 only requires that a written warning is required before citing an individual for a first offense involving a minor or incidental violation. The statute does not require this written warning for any person who has already committed one or more violations. The rule should be revised.

RESPONSE: N.J.S.A. 4:22-16.1 requires a written warning for a first offense. The Department acknowledges that N.J.A.C. 2:8-8.7(a)1 is not clear that subsequent minor violations do not require a written warning prior to citation or arrest. On adoption, the language of the rule has been revised at N.J.A.C. 2:8-8.7(a)3 to clarify that a written warning is not required in instances where such a warning has previously been issued. The Department believes this clarification reflects the statutory intent.

COMMENT: The penalty provisions for “minor violations” require a notice to inspect the premises to be issued in advance giving the offending facility an opportunity to correct or hide the abuse.

RESPONSE: The provision of the rule directing any investigation authority to obtain consent is not unduly burdensome and recognizes the need to prevent the potential spread of disease (between animals or between animals and humans) as

well as limitations on searches of property. The rule at N.J.A.C. 2:8-8.5(d) provides exceptions to the consent requirement.

COMMENT: If a minor violation is demonstrated, the offender would merely get a written notice. This is basically a warning rather than a penalty and acts to give the industry yet another chance to institute corrective behaviors.

RESPONSE: As noted above, the rule follows the statutory requirement that written warnings be issued for first offenses. The Department expects that upon receipt of such a warning, persons would institute corrective behaviors so the standards of the rule are met. By curing the violation, animal health and well being will be enhanced, a goal the Department, enforcement authorities, and SPCAs share.

N.J.A.C. 2:8-8.7(a)2

COMMENT: This proposed section that provides that enforcement authorities may initiate enforcement action where a person “fails to cure the violation within a reasonable time and after receiving notice of violation under this section” should be deleted because it is vague and places uncertain limitation on SPCA and law enforcement authorities. At minimum, the provision should be revised to specify exactly what time is reasonable and how much time enforcement authorities must allow for a violation before taking enforcement action.

RESPONSE: The Department disagrees that its rule is vague, that it places uncertain limitations, or that it should be revised. Given the variety of animals, farms, and practices covered by these rules, listing minor violations, that is, those

that occur due to neglect or substandard practices and which do not put the animal's life in peril, or result in certain conditions, and the time necessary to cure them after a warning, would be impossible. The Department expects enforcement personnel to give the term "reasonable" its commonly understood meaning and to assess the type of violation and the corrective measures needed to be undertaken in determining the point at which an enforcement action should be initiated.

COMMENT: If the investigation shows a violation, the rules require that the violator be given a chance to correct the violation within a reasonable time. This provision should be deleted and replaced with the Department authority to charge daily civil administrative penalties such as those levies by the DEP for water pollution violations (see N.J.A.C. 7:14). The penalties should begin on the date that the Department first became aware of the violation and should multiply daily until the violation is corrected. The rule should empower the Department to require payment of these penalties without going to court unless the violator appeals and prevails in a contested case hearing in the Office of Administrative Law.

RESPONSE: The law does not give the Department enforcement authority nor does it provide for the type of penalty commenter suggests. In the absence of legislative action, no such changes can be made.

N.J.A.C. 2:8-8.7(a)3ii

COMMENT: Under the proposed standards, only inspections conducted by the State Veterinarian would necessarily result in a written warning/notice that "also

include corrective measures to be taken to achieve compliance.” This rule should be revised to provide for the inclusion of corrective measures in any investigator’s written warning.

RESPONSE: The rule at N.J.A.C. 2:8-8.7(a)3iii encourages NJSPCA, county SPCAs and State and local authorities to consult with the State Veterinarian to determine appropriate corrective measures. This rule recognizes the need for cooperation between investigative authorities and the Department and further recognizes that in some instances, those investigative authorities may not possess adequate knowledge to specify appropriate corrective measures. While the Department has not required warnings to include corrective measures, where investigating authority has appropriate and sufficient knowledge or has consulted with the State Veterinarian to determine the changes needed to ensure the standards are met, that information should be included.

N.J.A.C. 2:8-8.7(b)1

COMMENT: Commenters, while acknowledging N.J.A.C. 2:8-8.7(b)1 requires initiation of enforcement or penalty proceedings, object to N.J.A.C. 2:8-8.7(b)2 which provides that where severe violations are continuing, the NJSPCA, county SPCA or other State or local authority may take any steps authorized by N.J.S.A. 4:22-15 et seq. to assure the animal is cared for appropriately and bring an action in a court competent of jurisdiction to allow for confiscation. Commenters argue that the rule should require initiation of an enforcement action.

RESPONSE: As acknowledged by commenters, pursuant to N.J.A.C. 2:8-8.7(b)1, when a severe violation appears to have been committed, enforcement or penalty proceedings must be initiated. N.J.A.C. 2:8-8.7(b)2 provides where the severe violation is continuing (as opposed to a discrete act), steps should be taken to address the animal's needs, such as feeding, watering, providing medical care, or euthanizing and disposing of the animal, and if confiscation and forfeiture are appropriate, to initiate such action. The Department expects that the persons responsible for enforcement of these rules will, when necessary, take such steps. Not all severe violations will provide a basis for forfeiture actions. The rule reflects the need for enforcement authorities to use the statutorily authorized remedies as is appropriate. The Department notes that N.J.A.C. 2:8-8.7(b)2ii as proposed omitted the word "competent" in the phrase "a court of jurisdiction" and cited to N.J.S.A. 4:22-26 when the correct statutory provision is N.J.S.A. 4:22-26.1. On adoption, these errors have been corrected.

COMMENT: N.J.A.C. 2:8-8.7 should include an exception making clear that any enforcement authority's violation or disregard of the investigation and enforcement procedures set forth in these regulations should not constitute a violation for the purposes of imposing penalties or criminal prosecution under the regulations or N.J.S.A. 4:22-16. The proposed regulations should ensure that the State SPCA, county SPCAs and local enforcement officials are not at risk of prosecution for violations of the procedures set forth in the proposed regulations.

RESPONSE: The Legislature directed the Department to develop and adopt rules and regulations governing enforcement of the standards for humane treatment of

livestock. Persons enforcing the standards are expected to comply with these procedures. The Department will not codify an exception for authorities that violate or disregard the investigation or enforcement procedures. Moreover, the Department cannot and will not assure that authorities who violate the procedures are not at risk for prosecution or from civil liability. Law enforcement authorities, NJSPCA, and county SPCAs are entitled to protections and/or immunities as established by statute and case law. The Department will not make the requested change.

General Comments

COMMENT: Several commenters support the adoption of the rule proposal noting that the Department developed the rules using scientifically based standards for the minimum humane care of animals in New Jersey.

RESPONSE: The Department thanks the commenters for recognizing the Department's efforts and for supporting the rule.

COMMENT: Commenters support the standards and assert that modifications to these rules would place an unnecessary burden on agriculture and animal owners.

RESPONSE: The rules have established baseline standards for humane treatment of livestock based on scientific evidence. As noted in the prefatory language to the proposal, many farmers in this State exceed these minimum standards. While consideration of industry sustainability was a factor in the development of the rules, the primary focus at all times has been the humane treatment of animals. Should information become available that warrants modification to these

standards to protect livestock, the Department will pursue additional rulemaking despite the possibility of increased burden on animal owners.

COMMENT: Several commenters state that the rule must be adopted for them to be able to continue their agriculture business in New Jersey.

RESPONSE: The Department is adopting its rules with technical and substantive changes and is proposing amendments to some sections of the rules. The Department is hopeful that the rules will enhance the ability of New Jersey farmers to continue their vocation and will ensure that livestock are treated humanely.

COMMENT: Several commenters thank the Department for a balanced approach and for discounting the “extremist propaganda” of animal rights groups whose “real agenda is to change society by eliminating all animal use for human benefit.”

RESPONSE: The Department thanks the commenters for their support and notes that animal welfare concerns are an essential component to the entire regulatory scheme. Animal welfare advocacy is distinguishable from the type of agenda cited by the commenters.

COMMENT: Several commenters refer to a concerted campaign by animal rights groups to have people write or email the Department to oppose the adoption of the rule in order to advance their agenda.

RESPONSE: The Department has received thousands of comments to its rules, most of which were form letters or portions of form letters. Responses to those comments are set forth above.

COMMENT: I have been a professional animal keeper at an accredited zoo for almost 20 years and have seen animal-related regulations that run the gamut from pathetically incomplete to ridiculously restrictive. As explained to me, your guidelines seem very reasonable and in keeping with professional standards.

RESPONSE: The Department thanks the commenter for her comment.

COMMENT: These comprehensive and carefully written guidelines outline standards of good care, from which determinations of true animal cruelty or neglect can be made. Additionally, our farmers need these guidelines and standards to protect them from harassment by the animal rights activists.

RESPONSE: The Department agrees that the rules will provide guidance for farmers and enforcement personnel. The Department does not expect that persons charged with enforcing the standards will engage in harassment.

COMMENT: These science-based proposals will protect animals, the producer, and the public. They will protect the animals from true cruelty and neglect, and will ensure the public safe food at reasonable prices.

RESPONSE: The Department agrees that its rules will aid in these goals.

COMMENT: The guidelines were both practical and easy to understand. Producers should have a clear understanding of what humane treatment of

livestock involves. I also appreciate your comments that many farms will always exceed these guidelines.

RESPONSE: The Department thanks the commenter for the comment.

COMMENT: I would like to commend you and your staff for setting a very high standard ensuring that New Jerseys livestock are humanely treated. As I read through this document I can see that you have uniformly extended this rule to encompass all levels of livestock producers. I was particularly impressed to see that you have set the bar high in using industry standards wherever possible.

RESPONSE: The Department thanks the commenter for the comment.

COMMENT: Having been in large animal practice as well as a large animal Ambulatory Clinician at Tufts (covering Massachusetts, Connecticut, and Rhode Island) for 17 years, I am very familiar with the management practices of livestock owners in the Northeast. In addition, I served on the Farm Animal Welfare Study Committee for a number of years. That committee consisted of a variety of people in agriculture and humane groups and was formed in response to a referendum on the Massachusetts ballot one year attempting to legislate farm animal husbandry practices. Having seen a number of attempts by inexperienced non-agriculturists to influence farming practices, I was initially skeptical in reading this document. However, I was pleasantly surprised to find it to be right on target. I find the proposed rules to be very well written. They appear to be based on science, common practice, and good sense. The proposed standards should be easily met by commercial farmers. Indeed, commercial farmers not meeting these standards are bound to fail. I applaud the efforts of the author of

these proposed rules – it is obvious they were written with great thought and thorough research.

RESPONSE: The Department thanks the commenter for the comment.

COMMENT: The commenter agrees that these rules should only focus on the basic standards for humane care of livestock. Any changes to these regulations to make them any more stringent would have negative impacts on livestock producers and are not justified.

RESPONSE: The Department thanks the commenter for the comment.

COMMENT: The proposed standards were developed to objectively determine animal condition, the adequacy of feed and water, when and if shelter is required, how routine management practices (identification, dehorning, tail docking, debeaking, etc.) should be humanely carried out, the proper marketing and sale of animals, and what are appropriate standards of treatment for sick or injured animals. In addition to setting standards of what constitutes animal cruelty, the guidelines support the humane, prudent use of animals:

1. Implicit in the Humane Standards document is the acceptance of the human use of domestic animals. The original charge given by the legislature states that there is a presumption that the raising, keeping, care, treatment, marketing, and sale of domestic livestock in accordance with the standards developed and adopted shall not constitute a violation of any provision of this statute involving alleged cruelty to, or inhumane care or treatment of, domestic livestock.

2. Also implicit is the acceptance of contemporary livestock management practices. These guidelines were developed with input from a variety of sources including farmers, Cooperative Extension Service Bulletins from around the country, accepted industry standards and quality assurance programs designed to ensure animal health, humane animal care, and environmental quality, and the advice of veterinarians, University extension personnel, and other animal health professionals.

3. Finally, implicit in these standards is the right of farmers to earn a living by raising livestock. Although New Jersey farmers should be encouraged to ensure their animal's well-being, they should not be subjected to onerous requirements that put them out of touch with and at a disadvantage to farmers in other parts of the country. America has long had an unwritten contract with farmers. They have been entrusted with our animals and our lands. They have in turn provided us with the safest, most abundant, cheapest, and most wholesome food in the entire world. There may sometimes be concerns about how animals or lands are managed. However, I believe that farmers are the original animal welfarists, because animals that are not cared for do not produce.

These guidelines provide objective means of determining if animals are underfed, poorly cared for, in need of better shelter, or health care. They also provide improved guidelines for use in sale and marketing. Within the context of these guidelines, it will be easier to identify and expose animal cruelty and neglect.

RESPONSE: The Department agrees with the commenter and thanks him for his input.

COMMENT: I am most concerned that failure to support the proposed rule will work to undermine the ability of institutions such as Rutgers to carry out research essential to improving the human condition in very many ways.

RESPONSE: The Department notes that livestock research at institutions such as Rutgers is governed among other things by The Guide for the Care and Use of Agricultural Animals in Agricultural Research and Teaching, (Federation of Animal Science Societies, as amended and supplemented). The Department does not anticipate that these rules would impact on the University's research programs.

COMMENT: The document provides structured guidelines for owners and producers of livestock whose livelihood depends on raising healthy animals and producing a quality end product for the consumer.

RESPONSE: The Department agrees and thanks the commenter for the comment.

COMMENT: This rule is a good faith effort to provide an adequate, comprehensive and balanced solution to a difficult problem that carries with it a wide range of opinions and emotions. I have been following this matter closely, as the State of Florida has recently dealt with similar issues, and I applaud your effort to address the concerns associated with humane standards.

RESPONSE: The Department thanks the commenter for the comment.

COMMENT: Several commenters urge the Department to support farmers and to "let farmers farm; do not let people who don't farm decide what is best for farmers."

RESPONSE: The rule was developed in consultation with the New Jersey Agricultural Experiment Station, as well as with veterinarians, Department staff, extension agents, producers, allied industries, the State SPCA, and after review of the scientific literature and agriculture curricula as taught at veterinary schools, land grant colleges, and agricultural extensions. The rules set forth standards that ensure humane treatment of domestic livestock while at the same time recognizing the day-to-day operations of a farm. As such, while the rules “support” farmers, they have not done so at the expense of the livestock which are raised on those farms.

COMMENT: One commenter asks whether honeybees are covered by the rule, as while they are not thought of as livestock, they are God’s creatures too.

RESPONSE: The Legislature defined “domestic livestock” as “cattle, horses, donkeys, swine, sheep, goats, rabbits, poultry, fowl, and any other domesticated animals deemed by the State Board of Agriculture and the Department of Agriculture, in consultation with the New Jersey Agricultural Experiment Station, to be domestic livestock for such purposes.” The Department has not identified honeybees as domestic livestock and does not believe their inclusion is within the Legislature’s direction.

COMMENT: Any decisions made in New Jersey will have repercussions throughout the country, ultimately having an impact on the ability to compete in the world marketplace. New Jersey producers rank well when evaluating animal welfare concerns.

RESPONSE: The Department agrees that its rules may impact on the ability of producers to compete in the marketplace. The ability to be competitive, however, cannot be at the expense of humane treatment of domestic livestock. The Department agrees that New Jersey producers would rank very high with regard to animal welfare concerns. These rules will ensure that those who fail to meet the minimum standards will be sanctioned.

COMMENT: Commenters do not know of any factory farms in New Jersey and state that all the raising of livestock in New Jersey is done by family farmers and individuals who love animals and wish to care for them.

RESPONSE: The Department agrees that farmers have a genuine concern for their animals.

COMMENT: In Europe they have let emotions run their animal welfare program and now they don't have enough food there to sustain without importing from other continents. Is this what we want? Our country is a food basket and needs to stay that way. Again I say that only science should support any animal welfare laws.

RESPONSE: As noted above, the Department created these rules following appropriate consultations and review of scientific literature. The rules' focus is on animal welfare as determined by animal scientists, veterinarians and other knowledgeable persons. The European Union has developed standards related to domestic livestock, some of which are similar to those New Jersey is adopting. Other standards reflect best management practices, which farmers may choose to follow, but which the Department has not adopted.

COMMENT: Several commenters state the proposal will be a useful tool to the livestock industry and should become a model for other states as well.

RESPONSE: The Department thanks commenters for their comment.

COMMENT: Farmers in the Garden State do what they do based on expertise and experience that comes from their own lifetimes of farming, and the experience of generations before them. It also comes from modern, science-based research and best management practices developed by professionals in private and public sectors, including those at Rutgers Cook College.

RESPONSE: The rules reflect science-based farming practices. The Department, as required by N.J.S.A. 4:22-16.1, consulted with Rutgers Cook College in the development of these rules.

COMMENT: When politicians start making up standards for the humane treatment of animals it makes me very nervous. Animals are not people and farm animals are not pets. Humane treatment is only in the best interest of the producer and most producers I am aware of do a very good job. However I realize if one messes up, it always makes the news – in living color.

RESPONSE: The Department, in consultation as described above, has developed these rules. The Department agrees that humane treatment of animals will benefit producers and these rules will give guidance to the farming community so “mess-ups” are avoided.

COMMENT: The choices a farmer makes in regards to his animals are his and his alone. They will dictate whether his business is a success or a failure. It does not

mean he always likes his choices but it's the best he has in his eyes. No matter what farm practice I choose, herd health and financial success go hand and hand.

RESPONSE: While farmers are free to make choices with regard to their animals, those choices may indeed be circumscribed by the standards here adopted.

COMMENT: Any successful person who raises livestock puts their animal needs before any other. These standards give protection to those producers doing things right, protecting them from unwarranted complaints while also protecting livestock's most basic needs.

RESPONSE: The Department thanks the commenter for the comment.

COMMENT: Commenter addressed several statements from the hearing held on June 20, 2003 stating, "First, I was distressed by the way many who opposed the standards often referred to farmers in a pejorative fashion, as not caring about their animals, as being factory farmers, or only interested in profits. Of the 130 or so dairy farms in New Jersey they are all, to my knowledge, owned by families. All of these farmers are concerned about the welfare of their animals and know that animals that are mistreated or neglected will not produce. Nearly all other farms in New Jersey, swine, beef, sheep and goat, horse, and poultry are family owned."

RESPONSE: The Department agrees that farmers are concerned with the welfare of their animals.

COMMENT: Animal welfare and animal rights are two distinctly different issues. I support animal welfare which is defined as the reasonable care of all animals:

that is, good animal husbandry practices. Conversely, “animal rights” is the position taken by extremists who believe that animals have moral and legal rights equal to humans.

RESPONSE: The Department has written its rules with the welfare of animals as a central focus. The American Veterinary Medical Association has discussed the differences between animal rights and animal welfare in its policy position statement as follows:

“Animal welfare is a human responsibility that encompasses all aspects of animal well being, including proper housing, management, nutrition, disease prevention and treatment, responsible care, humane handling, and, when necessary, humane euthanasia.

Animal rights is a philosophical view and personal value characterized by statements by various animal rights groups. Animal welfare and animal rights are not synonymous terms. The AVMA wholeheartedly endorses and adopts promotion of animal welfare as official policy; however, the AVMA cannot endorse the philosophical views and personal values of animal rights advocates when they are incompatible with the responsible use of animals for human purposes, such as companionship, food, fiber, and research conducted for the benefit of both humans and animals.” (AVMA Policy on Animal Welfare and Animal Rights).

The Department agrees with the position of the AVMA.

COMMENT: Animal agriculture producers are committed to providing the utmost in humane care for their livestock. They view this responsibility as both a moral obligation to the animals and an economic necessity, since animals who are care for properly perform more effectively as meat producing animals. Healthy animals are the most productive. Partly through a concerted effort to ensure the safety and welfare of their stock, U.S. producers continue to accelerate the efficiency of the American food animal industries. In caring for their livestock, U.S. animal agriculture producers use modern technology as well as experience they've gathered across generations.

Unlike wildlife, which must depend on only Mother Nature for adequate nutrition and well-being, domestic food animals' needs for food, water and health care are assured by humans.

Producers recognize their responsibility to assure this care, and respect their role in producing healthy, well-treated animals.

To that end, I implore you support only humane livestock welfare legislation that is based on sound animal science and the most advanced management practices. Therefore, I support N.J.A.C. 2:8, Proposal Number: PRN 2003-168.

RESPONSE: The Department thanks the commenter for his support. The Department notes that it has established baseline standards for humane care and not necessarily the most "advanced" management practices. The Department encourages producers to follow best management practices but will not require them as humane care of animals is met by the standards in these rules.

COMMENT: I have a question regarding the definition of “routine husbandry practices” found at N.J.A.C. 2:8-2:8-1.2(a). To which routine husbandry practices does the last sentence of this definition refer? Clearly there are routine husbandry practices, both listed and unlisted, for which physical restraint is not required, yet the definition seems to say that without physical restraint these practices are not acceptable.

RESPONSE: The definition as proposed stated “It is acceptable to perform these practices with physical restraint only.” The intent was to note that anesthesia was not necessarily required and that use of physical restraint was acceptable. The rule does not mean that physical restraint must be used. The Department notes that it is proposing an amendment to the definition of routine husbandry practices elsewhere in this issue of the New Jersey Register and this phrase will be deleted.

COMMENT: It is also sad that many people now days have no idea where food comes from or what it takes to get food to their market. Many children do not know that apples come from trees and that hamburger is made from animals. They think that they are produced by machines. Last week we had a student tell his teacher that he did not need to learn science, because he is a vegetarian.

RESPONSE: The Department acknowledges that there are gaps in the public knowledge about animal agriculture. The Department’s rules may provide some information regarding that topic.

COMMENT: Commenter, a veterinarian, states that in his experience in recent years, most people who violate the rules of common sense in raising livestock are hobbyists rather than commercial farmers. In most of those cases their mistake is

one of ignorance rather than intentional abuse. He suggests that the Department encourage State Extension personnel to seek out hobbyists and educate them in good farming practices before or just after they make their first animal acquisition.

RESPONSE: The Department's rules will apply to hobbyists. The Department will facilitate training as necessary for hobbyists, commercial farmers and/or enforcement personnel.

COMMENT: The farmer must have an avenue by which he can get reasonable advice that is sensitive to the practical problems of the farmer. The subject for these consultations will widely vary and it certainly will cost money. Therefore, there should be some funding provision in the law to offer support consultation to achieve the objectives of the law.

RESPONSE: The Department will facilitate training related to these rules, however, no funding source currently exists. The Department will look into possible funding sources.

COMMENT: Comments criticizing the length of time taken to develop the standards are unfair given the lack of funding allotted to the project and the need to manage and maintain existing health programs in the Department, as well as the need to respond to disease outbreaks.

RESPONSE: The Department thanks the commenter for his comment.

COMMENT: On numerous occasions people have stated that animals are sentient beings. The people who developed these guidelines avoided this terminology.

Animals are not sentient in the ways that humans are. Although they may feel pain, their reaction to that pain is not in the cognizant, self-aware manner that a human would. All anthropomorphic language was avoided.

RESPONSE: The commenter is correct that the use of terminology related to sentience was avoided in the drafting of these rules. The Department acknowledges that there is a philosophical debate regarding the issue of animals as sentient beings as well as how the term should be defined. Resolution of that debate is not necessary where, as here, the Department has developed rules for the humane treatment of domestic livestock consistent with the directive from the Legislature.

COMMENT: Commenter states that he hopes that when the Division of Animal Health completes their final draft of guidelines they will be based on the best available science and not steered by human emotion or opinion polls. The process followed by the Division in the development of these guidelines was both science-based and grassroots. They should be commended for doing such an outstanding job.

RESPONSE: The Department has developed its rules based on the best available science and is aware that certain segments of the population support animal rights. The Department thanks the commenter for his comments.

COMMENT: The guidelines do not merely codify existing industry standards. These guidelines were never meant to regulate all aspects of animal welfare and care. They were intended to define what is animal cruelty in order to give those working with animals and animal owners an objective standard of codification. In

developing these standards the Division of Animal Health sought the best scientific input available. There was disagreement on some issues. Some management practices are controversial throughout the country.

RESPONSE: The Department agrees that it developed its standards using scientific standards. The proposed amendment to the definition of routine husbandry practices published elsewhere in this issue of the New Jersey Register, which clarifies that those practices include those taught at veterinary schools, land grant colleges, and agricultural extensions, may eliminate some concerns regarding practices some call controversial.

COMMENT: The rules' minimum standards should be mandated so the industry does not remain far behind the humane standards consumers are coming to expect.

RESPONSE: The standards set forth by these rules are considered mandatory, although the Department notes that producers may exceed these standards.

COMMENT: Commenter states that farmers he knows personally go to great efforts to ensure humane treatment of their livestock. He asserts that such is not always the case with larger commercial operations. He believes the proposed rules are important to maintain the integrity of the family farming tradition in this State and not to allow the type of "factory farming" practices that have gained notoriety in many states.

RESPONSE: As noted in the prefatory language of the rules, farmers in New Jersey meet or exceed the baseline standards set forth in these rules. The adoption of these rules at this time will provide livestock owners with a clear understanding

of their responsibilities as to raising, keeping, care, treatment, marketing and sale of their animals. Further, these rules will provide law enforcement authorities and the State and county SPCAs with appropriate guidance as to standards for humane treatment. As those entities enforce the State's animal cruelty laws, their cooperation with the Department will enhance the ability of the State to ensure that diseases (or threats of disease) will be identified quickly and appropriate action taken to prevent the transmission of those diseases which could harm the public or other animals. The Department notes that New Jersey's farms are typically small and family owned.

COMMENT: Commenters who believe the rules are inadequate question whether the persons writing the standards were bribed.

RESPONSE: The Department takes offense at the suggestion that persons involved in the development of these rules were bribed or in any way failed to execute the duties in an appropriate fashion.

COMMENT: Commenters believe the rules should address humane slaughter.

RESPONSE: The legislative directive to the Department did not include developing rules for slaughter.

COMMENT: Commenter states prohibiting farm euthanasia by non-veterinarians may prolong the suffering of terminally ill or acutely injured animals.

RESPONSE: The rules require that euthanasia be performed by a knowledgeable person skilled in the method employed using a method sanctioned by the

American Veterinary Medical Association. The rule does not require that a veterinarian perform the procedure.

COMMENT: Commenters believe consumers seek out and will pay more for animals that have been raised and slaughtered humanely.

RESPONSE: The rules establish baseline standards for humane treatment. While the Department acknowledges receipt of the comments, it lacks sufficient information to address consumer purchasing patterns as they relate to this issue.

COMMENT: Commenters state that people should follow a vegetarian or vegan diet.

RESPONSE: The Department acknowledges that people may choose to follow different diets for religious, moral, health or other reasons.

COMMENT: Commenters support the efforts of Assemblywoman Loretta Weinberg and Senator Wayne Bryant to pass a bill related to veal calf raising.

RESPONSE: The Department is familiar with the legislation that has been introduced. While at this time, there are no veal calf raising farms in New Jersey, should such a farm commence operations, it would be required to follow the standards set forth in these rules.

COMMENT: Several commenters submitted personal attacks against the State Veterinarian, the Secretary of Agriculture and others in the Department.

RESPONSE: The Department was disturbed by the vicious and angry tone of the comments received. To the extent those comments raised any substantive issues, they have been addressed elsewhere in these responses.

COMMENT: The Department received two requests for an extension of the comment period.

RESPONSE: This request was denied. The Department's articulated standards for extension of the comment period are set forth at N.J.A.C. 2:1-3.6. Those standards allow the Department the discretion to extend the comment period, if, within 30 days of publication of the notice of proposal sufficient public interest is expressed. The requests for extension were both received more than 30 days after the publication of the rule proposal and the number of requests did not meet the Department's standards for sufficient public interest. Although not required to do so, the Department did notify both individuals that their requests were denied at the time they were made. Given the large number of comments received and the attendance at the public hearing, the Department is confident that the public had ample opportunity to express their opinions on this rule proposal.

COMMENT: Commenter states that animal rights groups and citizen activities will continue to put on pressure to alter animal cruelty laws.

RESPONSE: The Department acknowledges the rights of citizens to petition the government for changes of laws.

COMMENT: Commenters state that if the rules are passed, consumers will boycott products from New Jersey.

RESPONSE: The rules reflect a careful examination of science to establish standards to prevent inhumane treatment. The Department regrets that the commenters may choose to boycott products from New Jersey based on the Department's actions.

COMMENT: Commenter states that during the time the regulations were under development, Ernie Zirkle, DVM, then Director of the Division of Animal Health in the Department, spoke at a meeting of the Animal Welfare Committee of the United States Animal Health Association. According to a staff member of the Animal Welfare Institute, Dr. Zirkle's comments displayed a bias toward the agricultural industry and against the concerns of animal protection organizations. In light of the reported statement attributed to Dr. Zirkle, the commenter asks the Department to remove any individual who has displayed excessive bias and replace him with State officials who are balanced and knowledgeable in their approach.

RESPONSE: Upon receipt of this comment, in July 2003, the Department immediately referred the matter to its ethics officer. Dr. Zirkle, who had retired on December 31, 2002, and who had been acting as a consultant to the Department, was removed from the project in order to avoid any conflict or any appearance of impropriety. While there may have been preliminary responses to comments drafted by Dr. Zirkle, all responses to this proposal have been drafted and reviewed by Department staff as well as the Board of Agriculture. The Department is confident that the rules were appropriately drafted for proposal and that comments received have been given full and fair and unbiased consideration.

COMMENT: The regulations should protect welfare of animals rather than codify husbandry procedures that, while profitable to some producers, cause suffering to animals.

RESPONSE: The regulatory scheme provides baseline standards for humane care of domestic livestock. Permitted procedures include those performed in accordance with the rules and as taught by veterinary schools, land grant colleges and agricultural extensions, and, therefore, will not result in inhumane treatment.

COMMENT: The American Veterinary Medical Association finds the references, standards, and guidelines on which the proposed rule is based are those that have been scientifically established and accepted by veterinarians and other animal care professionals as comprising a minimum acceptable level of care for livestock.

RESPONSE: Department agrees that it used scientifically established reference, standards and guidelines to develop its rules and thanks the AVMA for the comment.

COMMENT: “Each year in New Jersey approximately 140,000 cows and calves, 100,000 pigs, and 200,000 chickens are slaughtered for food. An additional 2.1 million egg-laying hens, and 21,000 dairy cows are kept on New Jersey farms, the vast majority in cramped, intensive conditions.

RESPONSE: According to the National Agricultural Statistics Service (NASS) 2002 statistics, the following livestock were raised in New Jersey: 44,000 total head of cattle raised in New Jersey. Of these, 13,000 are dairy cows and 8,000 are beef animals. The remaining numbers are heifers, steers, bulls, and calves. Therefore, the number of animals slaughtered for food in New Jersey does not represent native raised animals; the vast majority were imported from other states. Of the 9600 farms in New Jersey, most are small family-owned farms. The Department disagrees with the commenter that on these farms, the animals are

kept, maintained, or raised in cramped, intensive conditions. If the farms fail to meet the requirements of these rules, the owners would be subject to citation.

COMMENT: The total number of animals “potentially subjected to cruel and inhumane treatment in the livestock and poultry industries vastly exceed all other potential cruelty situations throughout the country by several orders of magnitude.” “Even a minor change in word or phrase could have an effect on millions of animals.”

RESPONSE: The Department’s regulatory initiative is directed to farms in New Jersey and the standards these rules establish will ensure that persons subject to these rules will treat animals humanely and will assist in raising healthy animals. The rules have been carefully drafted to provide baseline standards for humane care and to provide guidance on their application and enforcement. The Department will not comment on how other jurisdictions may choose to address issues surrounding agricultural production.

COMMENT: Several commenters argued that agricultural practices that they considered inhumane need to be reformed. Those commenters referred to a speech made by U.S. Senator Robert Byrd in 2001 which discussed the need for humane treatment of animals.

RESPONSE: The Department acknowledges that there has been public discussion and debate about this issue. The Department agrees animals should be cared for and treated in humane fashion.

COMMENT: Several commenters referenced public opinion polls suggesting that consumers find that some practices routinely employed in the agricultural industry to be unacceptable and suggest laws concerning the treatment of animals.

RESPONSE: The Department is aware of various polls and considered the information when formulating its proposal. The Department notes that while public opinion is certainly relevant, the validity of responses to such polling is related to the polling methodology employed. At least as to some of the polling data referenced, there is insufficient information to determine their validity. The Department, in developing these standards, has heeded the Legislature's directive to develop standards in consultation with the New Jersey Agricultural Experiment Station, by employing its expertise in reviewing scientific information to establish baseline standards for humane treatment of animals, while recognizing the spectrum of opinions related to treatment of animals.

COMMENT: Because of the public opinion polls, the nation's leading food retailers are now demanding reforms.

RESPONSE: The Department is aware of the animal welfare guidelines developed or accepted by food retailers in response to assertions of consumer consciousness and marketing considerations. The Department's role is to establish guidelines based on scientific information which will implement the Legislative intent of N.J.S.A. 4:22-16.1. As long as the practices set forth in such guidelines meet or exceed the standards set by these rules, they will be acceptable.

COMMENT: Large-scale animal factories threaten human health, damage the environment, and harm rural communities.

RESPONSE: The Department notes that most of the 9,600 farms in the State are family owned and, even in the absence of a definition of “animal factory” or an indication by the commenter of the type of harm that it asserts would be befall rural communities, the Department does not agree that farmers raising livestock in this State are harmful to the environment or to rural communities. In fact, the Department believes the rules will enhance New Jersey Smart Growth plan by keeping farm land in production and maintaining open space in New Jersey. This is consistent with the recent history of New Jersey voters’ support for Farmland Preservation (1998 Constitutional Amendment, Garden State Preservation Trust Act 1999). Additionally, the Department notes that its sister agencies, the Department of Environmental Protection and the Department of Health and Senior Services, regulate issues of public health concerns.

COMMENT: In response to the widespread consensus that farm animal reform is sorely needed, in 1996, the New Jersey Legislature directed the Department to develop and adopt both standards for the humane raising, keeping, care, treatment, marketing, and sale of domestic livestock, and rules and regulations governing the enforcement of these standards.

RESPONSE: The legislative history does not support the commenter’s thesis on the genesis of this legislation. The Department notes that at the time the law was enacted, the State Board of Agriculture, the Department of Agriculture, and New Jersey State SPCA were aware of reports of inconsistencies observed in the way local SPCAs were handling alleged livestock abuse cases. The legislation directs the Department to create definitive standards which could be applied uniformly to

ensure the humane care of livestock in a manner that was consistent with production agriculture.

COMMENT: A number of comments criticized the length of time taken to publish these regulations.

RESPONSE: The Department is aware of the time taken to propose the rules. As with virtually all agency initiatives, issues related to funding/appropriations and emergent matters contributed to the delay. Moreover, the Department expended significant time and resources in consulting with the New Jersey Agricultural Experiment Station, evaluating scientific literature and the curricula of veterinary schools, land grant colleges and agricultural extensions to develop the baseline standards set forth in the rules. The Department believes the rules demonstrate that effort.

COMMENT: The Department has not adequately fulfilled its statutory mandate to provide actual standards for humane treatment of animals raised in the livestock industry. Commenters assert the standards are vague and confusing and fail to ensure humane treatment of livestock, and instead allow for farming practices because they are routine or traditional without analysis or consideration of the relative humaneness or cruelty of a particular action.

RESPONSE: The Department disagrees and believes that the baseline standards provide tools to identify those animals which are being treated inhumanely and allows for the appropriate enforcement actions by authorized legal authorities. The Department has answered these general assertions regarding particular farming practices in the Responses to specific sections above.

COMMENT: Several commenters refer to guidelines and reports that address issues related to treatment of domestic livestock, including the report of the European Commission's Scientific Veterinary Committee, the guidelines of the Food Marketing Institute and National Council of Chain Restaurants, and the Animal Welfare Institute Humane On-Farm Husbandry Criteria for Pigs, and suggest that they be used as the appropriate standard for the rules.

RESPONSE: The Department reviewed over 400 references throughout the development of the rules and has reviewed the materials provided by the commenters. The rules were developed based on the best, objective, scientific analysis as recommended and approved by the development committees, which were composed of representatives from NJSPCA, veterinarians, academicians, extension agents, producers, allied industry and Department staff. The guidelines and report cited by the commenters, in many instances, reference best management practices. The Department, while encouraging producers to employ such practices as long as they are consistent with the rules, has developed baseline standards to prevent inhumane treatment. The Department's standards fulfill its statutory mandate to create humane standards while acknowledging agricultural production practices, including those taught by veterinary schools, land grant colleges and agricultural extension agents for the benefit of the animal, the herd or flock, handlers and the public.

COMMENT: Commenters note that industry groups have adopted humane standards that exceed the Department's standards.

RESPONSE: The Department acknowledges that some industry groups and companies developed or accepted guidelines related to animal production. These guidelines are “best practices” and are used by those entities to encourage or require use of those practices by their suppliers. While the Department encourages producers to adopt best management practices as long as they meet or exceed the rules’ requirements, the Department will not mandate such practices as its rules provide baseline standards for treatment, below which, the treatment would be considered inhumane.

COMMENT: Several commenters recommended that the draft be withdrawn and revised. Some suggested that it be withdrawn and redrafted in consultation with the NJSPCA, county SPCAs, local law enforcement officials, and public interest organizations that are more familiar with both the special needs of animals used in the livestock industry and the practical reality of animal cruelty investigation and enforcement.

RESPONSE: The Department, which is very familiar with the special needs of animals used in the livestock industry, reviewed over 400 references throughout the development of the rules. The rules were developed based on the best, objective, scientific analysis as recommended and approved by the development committees, which were composed of animal welfare advocates including representatives from NJSPCA, veterinarians, academicians, Department staff, extension agents as well as producers and allied industry. The Department has determined that its standards, which will be required for all producers, set the baseline below which treatment would be inhumane. While best management

practices are encouraged, the Department determined that such standards should not be required at this time. These rules create an enforceable regulatory scheme which provides for humane treatment of animals within animal agricultural production. As discussed more fully in response to Comments in the Enforcement section, the rules recognize the elements of animal cruelty investigations and enforcement actions.

COMMENT: Commenters believe that animal welfare advocates, consumer group representatives, and farmers who have adopted livestock farming practices consistent with natural behavior and biology of farm animals should be consulted on this rule.

RESPONSE: The Department developed its rules with the New Jersey Agricultural Experiment Station, other professionals including animal welfare advocates including representatives from the NJSPCA, veterinarians, academicians, Department staff, as well as extension agents, producers and allied industries. The rules require that an animal's status or well being be determined based on a holistic evaluation of the animal. Well-being is defined as good health and welfare. The Department, both in preparing the rules as a proposal and in responding to the comments received in the proposal, has considered the opinion and research of animal welfare advocates as well as consumer groups. In addition, it has considered alternative farming practices. As noted in the Responses above, producers may elect to pursue alternative management practices so long as they meet or exceed the standards set forth in these rules.

COMMENT: Many commenters questioned the application of the rules to livestock slaughter for all species including poultry, and noted that the rules do not adopt any humane standards at all with regard to livestock slaughter.

RESPONSE: The legislative mandate specifically states that standards be developed are for the humane raising, keeping, care, treatment, marketing and sale of domestic livestock; it does not include slaughter, N.J.S.A. 4:22-16.1. Therefore, it is beyond the scope of the rules; the Department notes, however, that slaughter may be an acceptable method of euthanasia.

COMMENT: There were multiple comments stating that the draft regulations allow practices not authorized in the European Union or in European countries.

RESPONSE: The Department is aware of and has reviewed the European Union standards. The Department believes that its rules, which establish baseline standards, are appropriate for New Jersey and meet the legislative mandate. The EU is a federation of countries who have independently sought membership in the union for economic, social, and political advantage. Internally, its policies are compromises between nations with vastly different resources, values, and needs. Externally, the EU's aim is to further Europe's place in the world's economy.

In contrast, the Department is an agency created by statute which serves a specific function for the State of New Jersey. This function is to advance New Jersey's agricultural interests through the implementation of methods which advance the quality of the state's agricultural products. In doing so, the Department must operate within its statutory mandate. The EU, as a governing body, is bound by the opinions of its individual members in making policies on agricultural

development which are binding on all members nations. In 1998, the EU passed a council directive setting general guidelines for the treatment of farm animals. The guidelines contain some of the same recommendations included in the humane standards proposed by the Department. Other guidelines, as discussed more fully in response to specific comments above, reflect best management practices and are not appropriate or necessary for purposes of establishing baseline standards for humane treatment.

COMMENT: Commenters objected to terms such as “minimal delay,” “sufficient,” and “reasonable,” asserting that these terms are vague do not give regulated parties or enforcement officials sufficient guidance for protection of animals.

RESPONSE: Because there are many variables in animal agriculture including the type of animal involved, and the environment in which it is raised, the rules were necessarily written to allow for case-by-case evaluation. The words used in the rule are to be given their commonly understood meaning. N.J.A.C. 2:8-1.2. Further, the Department notes that the proposed rules do provide specific standards such as body condition scoring where applicable to ensure humane care of livestock and such scoring standards inform enforcement. Finally, the Department notes that national and international guidelines frequently employ terms such as “minimal,” “reasonable,” and “sufficient” in recognition of the variables in animal production. (for example, Canada Code, New Zealand Broiler Code).

COMMENT: Numerous commenters object to exemptions for routine husbandry practices, stating this permits mistreatment of animals, fails to set a standard, and creates exemptions for future farming practices. They assert the Department has not analyzed such practices adequately and that the exemption is defined by industry.

RESPONSE: Routine husbandry practices have been developed and are taught by animal scientists, extension agents, and veterinarians to provide for the health and well being of animals raised for agricultural purposes. The rules specify that only those practices necessary or beneficial to raise, keep, care, treat, market and transport livestock are allowed. It is precisely those practices which are taught by academics and professionals that are permitted by the rules. Permitting such practices does not sanction mistreatment, particularly where all techniques are performed in a sanitary manner by a knowledgeable individual and in such a way as to minimize pain. The Department will clarify the definition of routine husbandry practices to reflect its intent that only those techniques commonly taught by veterinary schools, land grant colleges and agricultural extension agents are acceptable. The amended definition will be proposed elsewhere in this issue of the New Jersey as follows:

“Routine husbandry practices” means those techniques commonly taught by veterinary schools, land grant colleges and agricultural extension agents, for the benefit of animals, the livestock industry, animal handlers and the public health and are employed to raise, keep, care, treat, market and transport livestock, including, but not limited to, techniques involved with physical restraint; animal

handling; animal identification; animal training; manure management; restricted feeding; restricted watering; restricted exercising; animal housing techniques; reproductive techniques; implantation; vaccination; and use of fencing materials, as long as all other State and Federal laws governing these practices are followed.

COMMENT: Throughout the regulations there is a directive to “minimize pain”; however, there is no attempt by the Department to outline methods for doing so such as anesthesia. Therefore this directive is open to interpretation by the industry which leaves the animals unprotected. This provision needs to be amended to set forth specific standards for minimizing pain.

RESPONSE: Individuals who are skilled and knowledgeable in performing routine husbandry practices have been taught to perform such procedures to minimize pain to the animal (for example, restrain animal so procedures can be performed; distracting the animal). In some animals there are contradictions related to administration of anesthesia. The Department declines to require anesthesia for procedures. To the extent that training provided by veterinary schools, land grant colleges and extension agencies for various procedures supports the use of anesthesia (for example, dehorning adult cattle), it should be used.

COMMENT: The standards should encourage producers to modify adverse conditions for animals that lead to aggressive behavior. Doing so would reduce the need for painful procedures to control aggression and would improve conditions for farmed animals. At the least, the standards should require that

anesthetics or painkillers be administered by trained technicians for the most invasive procedures such as castration and de-horning.

RESPONSE: The rules provide for the humane keeping of animals. In some species aggressive behavior is innate and not related to adverse conditions. Sometimes routine husbandry procedures, such as castration, are designed to reduce aggression, while other procedures are implemented to support animal health. As noted above, knowledgeable persons skilled in the techniques used should perform procedures in accordance with methods taught by veterinary schools, land grant colleges and agricultural extensions.

COMMENT: Grouping of animals according to size and behaviour in a vehicle allows a lot of latitude. Can a cow-calf be loaded with a bull? How do you predict the behavior of animals when changing environmental conditions arise? People behaviour is unpredictable and animals' even less.

RESPONSE: The rules require transport be done in a manner to minimize injury, illness and death. Appropriate grouping is necessary to accomplish this. Moreover, the Department expects transporters and owners will have baseline knowledge of animal needs and behavior. As to cattle, swine and small ruminants specifically, the Department has adopted the Livestock Trucking Guide for loading and truck space requirements as compiled by Temple Grandin, Ph.D.

COMMENT: The regulations as written are in contradiction to the Federal law.

RESPONSE: In sections where exceptions to rules are listed (N.J.A.C. 2:8-2.7, 6.7 and 7.7), the Department acknowledges that it has erroneously included "and water" in the rule. On adoption, that has been corrected. This is not a substantive

change as the Federal rule cited required that water be available to animals in holding pens.

COMMENT: Permitting animals to go for 24 hours without food is inhumane.

RESPONSE: The rules requires daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition. The daily access requirement may mean that animals are fed more than once a day.

COMMENT: Stating sick or injured animals must be promptly treated or humanely euthanized does not provide sufficient guidance to the community.

RESPONSE: The Department assumes that owners of domestic livestock have a baseline knowledge of their animals and animal behavior. Minor or transient illnesses may not require treatment and/or can be easily managed by owners. Where an animal shows clinical signs of disease or injury, such as those listed in N.J.A.C. 2:8-8.1(e), the Department expects an owner to initiate medical treatment, either by calling a veterinarian, or if they possess sufficient knowledge and skill, by administering to the animal himself.

COMMENT: In the sections dealing with hooved animals, add wording to provide that animals feet be maintained in a fashion which permits them to move freely and without pain.

RESPONSE: The rules' requirement for environments that support the animals' health and flooring that minimizes injury to the animal are adequate to ensure the overall hoof health of the animals. It is important to note that caring for animals' feet does not necessarily provide movement without pain, particularly when the

animal is suffering from a musculoskeletal injury or impairment above the level of the hooves. Additionally, horses may suffer from syndromes such as laminitis, which can be treated in part by corrective shoeing, but the ability to move freely and without pain may require long periods of time and treatment.

COMMENT: Shelter regulations are inadequate; trees should hardly be considered adequate especially where small animals or small numbers of horses or cattle are concerned.

RESPONSE: The Department's rules were developed after consulting scientific journals, academicians and extension agents throughout the State. The rule for shelter required that the environment provide relief from the elements, such as excessive wind, excessive temperature and excessive precipitation, that result in hyperthermia and hypothermia detrimental to animal's health. That relief may be provided by trees, land, windbreaks, overhangs or other natural weather barriers or constructed shelters. The rule requires adequate shelter, which, depending on the animal and the season, may vary.

COMMENT: All keeping sections involving shelter standards for animals kept outdoors should be revised to include the following language: "Permanent, spacious enclosures that allow for all animals to enter comfortably, as well as have unimpeded access to the outdoors, must be provided. Further relief from the elements can be accomplished with natural features of the environment, but only in conjunction with permanent enclosures." Many states already require that all farmed animals be provided access to enclosed structures for shelter.

RESPONSE: As long as animals are provided protection from the elements as required by the rule, enclosed shelters are not necessary for all livestock in New Jersey based on typical weather patterns. The rule requires that owners consider for each species, the age, breed, type, physiologic condition, size, production level/stage of development and environmental conditions when determining appropriate housing. That housing must support the animals' health. Given those factors, owners must determine the need for shelter and if necessary, provide enclosed shelter.

COMMENT: Insert a mechanism into the proposal that would allow for a periodic review of the standards, with the goal of revising them to reflect developments in welfare science and ethics.

RESPONSE: The Department will maintain an ongoing review of its rules to assure that it is meeting its goal of providing appropriate and enforceable standards. Pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the rules are required to be reviewed every five years.

COMMENT: Several commenters expressed their belief that the regulations do not fulfill the Legislature's charge to develop humane standards for domestic livestock and urge the Department to redraft the regulations prohibiting specific practices; the rules sanction practices that constitute animal cruelty.

RESPONSE: The Department disagrees. The baseline standards provide tools to identify those animals which are being treated inhumanely and allows for the appropriate enforcement actions by authorized legal authorities. The Department reviewed over 400 references throughout the development of the rules and has

reviewed the materials provided by the commenters. The rules were developed based on the best, objective, scientific analysis as recommended and approved by the development committees, which were composed of representatives from NJSPCA, veterinarians, academicians, extension agents, producers, allied industry and Department staff. The Department, while encouraging producers to employ best management practices as long as they are consistent with the rules, has developed baseline standards to prevent inhumane treatment. The Department's standards fulfill its statutory mandate to create humane standards while permitting agricultural production practices, including those taught by veterinary schools, land grant colleges and agricultural extension agents for the benefit of the animal, the herd or flock, handlers and the public.

COMMENT: Commenters describe routine husbandry practices as cruel, inhumane, barbaric, and despicable. Commenters ask if these are humane, what would be considered inhumane.

RESPONSE: The Department disagrees that routine husbandry practices are inhumane when performed consistent with these rules. Routine husbandry practices have been developed and are taught by animal scientists, extension agents, and veterinarians to provide for the health and well being of animals raised for agricultural purposes. The rules specify that only those practices necessary or beneficial to raise, keep, care, treat, market and transport livestock are allowed this provides for the humane care of animals. All techniques must be performed in a sanitary manner by a knowledgeable individual and in such a way as to minimize pain.

After reviewing the comments, the Department has determined that its definition of routine husbandry practices did not clearly reflect its intent that only those techniques commonly taught by veterinary schools, land grant colleges and agricultural extension agents are considered appropriate. The Department as noted above will propose an amendment to the definition elsewhere in this issue of the New Jersey Register.

The Department is aware that a segment of the public objects to animal agriculture in its entirety and other members of the public object to raising animals in anything other than a “natural environment.” Still others object to husbandry practices as described by the rules. Those opinions have been carefully considered by the Department. The Department, however, must base its rules on objective, peer reviewed scientific findings, and in consultation with the State Agricultural Experiment Station.

COMMENT: People do not want animals to be treated inhumanely; the Department should provide alternatives that allow animals to live a peaceful existence without suffering.

RESPONSE: The Department agrees that animals should not be treated inhumanely and has established standards to prevent such treatment. Producers are free to exceed the standards required.

COMMENT: Standards should allow animals freedom of movement and an environment that allows them to engage in some natural behaviors.

RESPONSE: The rules for each species set forth specific keeping requirements, including space, shelter, and environments. The commenter's concerns are addressed in specific sections above.

COMMENT: The rules do little to ensure safety and comfort of animals; the Department should stop the mistreatment of animals.

RESPONSE: The Department disagrees that its rules do little to ensure the safety and comfort of animals. The standards set in the rules provide baseline requirements so animals are treated humanely and safely and mistreatment of animals will be actionable.

COMMENT: Commenter states that the source, interpretation, and use of science used to support these rules must be considered; there is science to support humane standards. The commenter asserts that the strongest support for humane standards is common sense and that she doesn't need scientific experts to tell her that housing conditions or a non-natural diet are inhumane.

RESPONSE: The Department consulted with animal scientists, academicians and other experts as well as reviewed scientific literature supporting and opposing practices related to domestic livestock production. Having performed that exercise initially when the rules were developed for proposal, and during the period leading up to adoption, the Department is confident that its rules reflect an appropriate baseline standard.

COMMENT: Animals should be kept healthy and in comfortable housing.

RESPONSE: The Department agrees that animals should be kept healthy. The rules require that sick or injured animals be promptly treated or humanely euthanized. The rules' requirements for keeping sets forth housing standards to ensure the animal's health is supported.

COMMENT: By allowing veal crates, porcine gestation crates, forced molting and other brutal and inhumane factory farming practices, we diminish our humanity; the standards are unworthy of a civilized society.

RESPONSE: As discussed in the Responses to specific Comments above, the Department has carefully and exhaustively evaluated the practices cited by commenters. When performed consistent with these rules, and as taught by veterinary schools, land grant colleges and agricultural extensions, the practices are not inhumane. The Department disagrees with the commenter's opinions that animal agriculture violates the tenets of a civilized society.

COMMENT: Several commenters compared the keeping and use of livestock to the genocide of Native Americans and Jews and others in the Holocaust in the mid 20th Century and to the institution of slavery of Africans and African Americans in the 17th and 18th centuries.

RESPONSE: The Department categorically rejects the equation of horrific episodes in human history to the practices related to animal production agriculture. Such comparisons trivialize the deaths and suffering of human beings throughout history.

COMMENT: Commenters assert people who abuse animals also abuse people.

RESPONSE: The Department's rules are designed to prevent abuse of animals. To the extent persons engage in intentional acts of cruelty, they may be cited for a severe violation of the rules as well as criminal charges.

COMMENT: Animals raised for food are treated worse than any prison treats its most nefarious prisoners.

RESPONSE: The Department's rules provide minimum or baseline standards for humane treatment of livestock, including keeping, feeding, watering, and care and treatment. Comparisons to prisons are not appropriate.

COMMENT: People who allow or condone this abominable treatment of any living creature are void of integrity, compassion and strength of character.

RESPONSE: The Department does not agree that its rules sanction abominable treatment of animals.

COMMENT: Commenters cite to actions in other states related to humane treatment of domestic livestock. They assert there is a movement in California to ban confinement of sows during pregnancy. Commenters stated Florida recently banned gestation crates.

RESPONSE: Since submission of the comment, the California bill to ban confinement of sows and veal calves has been withdrawn from consideration by the legislature. The commenter is correct that Floridians, in a referendum, voted to ban individual stall housing for sows. The Department notes that the two swine producers that existed in Florida prior to the constitutional amendment have ceased operations in that State. A bill to ban individual sow housing in the State

of Maryland recently failed to obtain sufficient support in that State's legislative body. The Department has drafted its rules to provide for baseline standards of humane treatment. A full discussion of housing systems for swine is set forth in response to Comments above.

COMMENT: Several commenters state that this is an opportunity for New Jersey to play a leading role toward improving farmed animal welfare; the Department should take an ethical stand against cruelty.

RESPONSE: The Department is aware that the rules are among the first efforts in the nation to establish humane standards. The rules set the baseline below which animal would be subjected to cruelty. As noted in the Responses to Comments above, the Department will continue to ensure that its rules reflect current scientific standards.

COMMENT: One commenter opposed experimenting on animals.

RESPONSE: The Department was charged with developing standards related to the humane raising, keeping, care, treatment, marketing and sale of domestic livestock. Issues related to experiments performed on animals are outside the scope of this rulemaking.

COMMENT: Commenters state that animals are sentient beings that can think, feel pain, and feel emotions such as fear and happiness. They are not mere commodities to exploit and abuse at will.

RESPONSE: The Department acknowledges there is a philosophical debate regarding the issue of animals as sentient beings as well as how the term sentient

should be defined. Resolution of that debate is not necessary here as the rules have been developed to take into account the animals' needs and well-being.

COMMENT: Commenters state that subjecting animals to torture before they are murdered is unethical, immoral and disgusting.

RESPONSE: The Department agrees and notes that persons who torture and murder animals can now be prosecuted for a third degree crime. See P.L. 2003, c. 232.

COMMENT: This is a free country and animals should be treated as such too. Animals are the same as people and should be given the same respect as people.

RESPONSE: The Department notes that in this country the responsible use of animals for human purposes, such as companionship, food, fiber, and research, is an acceptable practice. The Department's rules have been developed to ensure humane treatment of farm animals.

COMMENT: While human consumption of animals does follow the "food chain" as the "higher species," people have an unwavering obligation to treat animals with the respect and dignity they deserve.

RESPONSE: The Department agrees that there is an unwavering obligation to treat animals humanely. Its rules fulfill that obligation.

COMMENT: All creatures are equal - from humans to ants. Animals, small children and the elderly are all in the same boat. They are unable to control what happens to them and are at the mercy of individuals who are capable of helping them. All we need to do is be willing to do it.

RESPONSE: The Department acknowledges that some people, such as the commenter, believe that all creatures are equal and may choose to modify their behaviors accordingly. As noted above, the responsible use of animals, including those raised in animal agriculture, is an acceptable practice. The rules will ensure that those animals who are reliant upon their owners will be appropriately cared for.

COMMENT: Several commenters stated that domestic livestock should be treated no differently from pet dogs, cats or birds. Because the housing, feeding or certain husbandry practices would not be used for pets, they should not be permitted for livestock.

RESPONSE: The Legislature has recognized the distinction between pet dogs and cats and domestic livestock and has specifically charged the Department to develop and adopt standards related to those animals. Animal agriculture requires different housing, feeding and husbandry practices from that of individual pets.

COMMENT: Several commenters state they speak farm animals that are voiceless, defenseless creatures, not inanimate objects; humans have a responsibility to care for and protect animals.

RESPONSE: The Department's rules were developed in consultation with the animal scientists at the New Jersey State Agricultural Experiment Station. Those scientists and others who have assisted the Department on the development of these rules, share the desire to care for and protect animals.

COMMENT: Commenters state animals are God's creatures and God is angry about the treatment they receive. God will hold us accountable for what we have done or failed to do.

RESPONSE: The Department acknowledges receipt of the comments but is unable to respond to the statements made.

COMMENT: Several commenters stated that people should put themselves in the animal's place, such as living in the housing systems that limit movement. Some commenters ask that people imagine what it would be like if an alien species came to earth and raised humans for food.

RESPONSE: The Department has developed its standards based on the best available scientific evidence related to animal science and welfare. The Department does not equate people with animals raised on farms.

COMMENT: Commenters state that the rules appear to have been written by agribusiness; lawmakers should be guarding the henhouse, the stable, and the fields, not the corporate "foxes."

RESPONSE: As noted above, these rules were developed in consulting with the New Jersey Agricultural Experiment Station and other scientists, academicians, Department staff, the NJSPCA as well as farmers and industry groups. They establish baseline standards for humane care. Farmers in New Jersey routinely meet or exceed these standards.

COMMENT: The regulations will permit factory farms to advertise they meet regulatory requirements for humane treatment of animals; it is deceptive for the Department to claim the standards are sufficient.

RESPONSE: The Department has created baseline standards which must be met to avoid changes of inhumane treatment. Farmers are free to engage in practices that exceed the minimum standards. The Department does not agree with the commenter's opinion that it is deceptive to claim the standards are sufficient as they have been developed after careful and critical review of scientific evidence.

COMMENT: Factory farms are replacing small, family owned farms.

RESPONSE: In New Jersey, the vast majority of farms are small, family owned farms. Whether small or large, farm owners are required to comply with these rules.

COMMENT: Commenter describes factory farming as "an attitude which regards animals and the natural world merely as commodities to be exploited for profit."

RESPONSE: The rules acknowledge the responsible use of animals for the benefit of people and set standards so those animals are not treated inhumanely. The Department does not use the term "factory farm." To the extent commenters refer to farms that keep large numbers of animals and produce products, those farms would nonetheless be required to meet all requirements in these rules.

COMMENT: Factory farm practices are bad for the environment; they produce excessive manure and other waste products.

RESPONSE: Farms must provide environments that support animal health. To the extent that excessive manure or other waste products are produced, those farms must comply with all State and federal laws.

COMMENT: Factory farming is a risk to food safety and public health; close confinement spreads disease, such operations use growth hormones and antibiotics, use of antibiotics may create potential for antibiotic resistance in humans.

RESPONSE: The rules require that the environment support animal health. Farmers are required to follow State and Federal laws, including those related to the use of growth hormones and antibiotics. These issues are discussed more fully in response to specific Comments above.

COMMENT: Commenters state that eating meat from animals that have suffered or that have lived in fear or oppression will result in that animal's negative energy being passed on to the person eating the meat.

RESPONSE: The Department acknowledges receipt of these comments but has not reviewed scientific evidence to support the commenter's contention. The Department notes, however, that its rules have been developed to ensure humane treatment and to minimize suffering of animals.

COMMENT: People are unaware of where their food comes from. If people knew what went on behind closed factory farm doors, we would have a lot more vegetarians.

RESPONSE: The Department acknowledges that there may be gaps in the public knowledge about animal agriculture but does not agree that additional knowledge of animal agricultural practices would necessarily result in more people choosing to follow a vegetarian diet.

COMMENT: Commenter states that animals should not be bred for food.

RESPONSE: As noted above, responsible use of animals for human benefit including food, is an acceptable practice in this country.

COMMENT: The Department received and viewed several videotapes submitted with written comments.

RESPONSE: The concerns identified in the videotapes have been addressed in specific sections of the Comments above.

Federal Standards Statement

The United States Department of Agriculture (USDA) has enforced the Animal Welfare Act, 7 U.S.C. §2131, to protect certain animals from inhumane treatment and neglect. The USDA's Animal and Plant Health Inspection Service (APHIS) administers the Animal Welfare Act, its standards and its regulations. This Act requires that standards of care and treatment be provided for certain animals bred for commercial sale, used in research, transported commercially or exhibited to the public. Individuals who operate facilities in these categories must provide their animals with adequate care and treatment in the areas of housing, handling, sanitation, nutrition, water, veterinary care, and protection from extreme weather and temperatures. The Animal Welfare Act regulates the care and treatment of warm-blooded animals, except domestic livestock used for food, fiber, or other

agricultural purposes. 7 U.S.C. §2132(g). This void in standards is addressed in these rules (N.J.A.C. 2:8), which establish humane standards for domestic livestock.

While there are no Federal standards that encompass all aspects of humane raising, keeping, care, treatment, marketing and sale of domestic livestock, there are a number of Federal standards that are applicable to individual components. However, the adopted rules do not exceed any applicable Federal standards and, therefore, a Federal standards analysis is not required. The following federal standards or requirements are cited in these rules:

49 U.S.C. §80502 sets forth the standards that must be met for feeding and watering livestock confined in a vehicle or vessel.

9 C.F.R. §88 sets forth the standards that must be met for commercial transportation of equines to slaughter.

9 C.F.R. §161 sets forth the criteria for accreditation of veterinarians in each state.

9 C.F.R. §301.2 defines non-ambulatory disabled livestock and other animals unable to move.

9 C.F.R. §313 et seq. sets forth the standards for slaughter of domestic livestock.

9 C.F.R. §313.1(c) et seq. sets forth the standards for pens in which dying, diseased or disabled livestock are kept.

9 C.F.R. §313.2 et seq. sets forth the standards that must be met for livestock and poultry held for marketing or slaughter.

39 C.F.R. §111.5 (US Postal Service Domestic Mail Manual, §C022 Perishables; Subsection 3.1, Day-old poultry, Subsection 3.3, Adult fowl, Subsectin 3.4, Adult chickens) sets forth the standards that must be met for feeding day-old poultry in accordance with the United States Postal Regulations.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks **[thus]**):

CHAPTER 8 HUMANE TREATMENT OF DOMESTIC LIVESTOCK

SUBCHAPTER 1. GENERAL PROVISIONS

2:8-1.2 Definitions

- (a) The following words and terms, as used in this chapter, shall have the following meanings. Words of art undefined in the following paragraphs shall have the meaning attributed to them by trade usage or general usage as reflected by definition in a standard dictionary, such as Webster's.

“Induced molting” is a management practice that simulates the natural molting event*, is designed to bring the entire flock into a non-laying and oviduct rejuvenation period, and improves bird's ability to produce a high quality

egg with a good shell, rather than the replacement of feathers.]* * and is designed to bring the entire flock in to a nonlaying and oviduct rejuvenation period. After the molt, a new plumage develops and the birds resume egg production at a higher rate with better egg quality. *

- (b) (No change from proposal.)

2:8-2.2 Feeding

- (a) (No changes from proposal.)
- (b) Each animal must have daily access to sufficient and nutritious feed to allow for growth and maintenance of an adequate body condition, as determined according to the criteria set forth in (b)1 and 2 below.
 - 1. *[BCS]* * Body condition* can be measured by direct measurement using a weight scale, when available, or by indirect measurement using a weight tape, when available; or
 - 2. The NJDA adopts and incorporates by reference the following BCS methods:
 - i. (No changes from proposal.)
 - ii. For replacement dairy heifers, (hereinafter referred to as BCS-heifers) using the scoring method set forth in *[Wattiaux M. A. Body Condition Scores, Chapter 12, Dairy Essentials (1999), The Babcock Institute for International Dairy Research and Development,

University of Wisconsin-Madison, Madison,
 Wisconsin. Copies of this document may be procured
 by contacting Babcock Institute, General Questions and
 Ordering, Room 204 Agriculture Hall, 1450 Linden
 Drive, Madison, WI 53706-1562. Phone 608-265-
 4169; Fax 608-262-8852; Email:
knielsen@cals.wisc.edu.] *Patton R.A., Bucholtz
 H.F., Schmidt M.K., and F.M. Hall, Body Condition
 Scoring-A management Tool, Department of Animal
 Science, Michigan State University, East Lansing,
 Michigan, September 1988. Copies of this document
 may be procured by contacting Dr. Herbert Bucholtz,
 Professor, Dept. Animal Science, 2265-H Anthony
 Hall, Michigan State University, E. Lansing, MI 48824.
 Phone: 517-355-8432; Fax: 517-432-0147; Email:
bucholtz@msu.edu.*

iii. – iv. (No change from proposal.)

3. (No change from proposal.)
4. Where the BCS methods identified in (b)2 above are used, each animal shall maintain the minimum BCS score in [(b) 3i through iv]* (b) 4i through iii* below. For purposes of (b)(4) i through iii *[above]* *below*, a "reasonable period of time" refers to the

amount of time it would be expected to take to restore an animal to an acceptable body condition, using diligent efforts to do so.

i.-iii. (No change from proposal.)

*[iv. A score of 1.0 is permitted at market.] *

5.- 6. (No change from proposal.)

2:8-2.7 Exceptions

(a) Exceptions to the standards set forth in this subchapter may be made for cattle provided the practices meet one or more of the following conditions:

1. - 2. (No change from proposal.)

3. Nothing herein shall prohibit the confinement of cattle in holding cages or pens where feed *[and water]* may be withheld for up to 24 hours in accordance with 9 C.F.R. §313.2.

i. For purposes of determining this period of confinement, time spent in a vehicle or vessel shall not be included.

2:8-3.2 Feeding

(a) Each horse shall be assessed individually for purposes of determining compliance with the standards for feeding set forth in this section.

Compliance with these standards shall not be determined by averaging the treatment or condition in a herd or group of horses.

1. (No change in proposal.)
2. *[BCS]* *Body condition* can be measured using one of the following methods:
 - i.-ii. (No change in proposal.)
- 3.-6. (No change in proposal.)

2:8-3.7 Exceptions

[(a)] Exceptions to the standards set forth in this subchapter may be made for horses provided the *[practices meet one or more of the following conditions:

1. The]* horses are under the direct care of a veterinarian who can provide a medically supportable written explanation for the conditions*[:]* *.*
- *[2. Horses may be confined in a vehicle or vessel for up to 28 consecutive hours without unloading for feeding and watering in accordance with 49 U.S.C. §80502.
 - i. For purposes of determining this period of confinement, time spent in loading and unloading is not included; and/or

3. Horses may be confined in holding cages or pens where feed and water may be withheld for up to 24 hours in accordance with 9 C.F.R. §313.2.
 - i. For purposes of determining this period of confinement, time spent in a vehicle or vessel shall not be included.]*

2:8-4.2 Feeding

- (a)-(b) (No change in proposal.)
- (c) Exceptions to feeding requirements for poultry are as follows:
 1. (No change in proposal.)
 2. Birds may be transported without feed in accordance with the United States Postal Regulations, 39 C.F.R. §111.5. (US Postal Service Domestic Mail Manual, §C022 Perishables; Subsection 3.1 Day-old poultry*~~[.]~~*, Subsection 3.3 Adult fowl, Subsection 3.4 Adult Chickens*.)
 3. (No change in proposal.)

2:8-4.3 Watering

- (a) (No change in proposal.)
- (b) Exceptions to watering requirements are as follows:
 1. (No change in proposal.)
 2. Birds may be transported without water in compliance with the United States Postal Regulations 39 C.F.R. §111.5. (US Postal

Service Domestic Mail Manual, §C022 Perishables; Subsection 3.1, Day-old poultry*, Subsection 3.3 Adult fowl, Subsection 3.4 Adult chickens*.)

2:8-4.5 Marketing and sale

(a)-(b) (No change from proposal.)

(c) Poultry may be mailed in compliance with the United States Postal Regulations Federal rule 39 C.F.R. §111.5. (US Postal Service Domestic Mail Manual, §C022 Perishables; Subsection 3.1, Day-old poultry*, Subsection 3.3 Adult fowl, Subsection 3.4 Adult chickens*.)

(d)-(j) (No change from proposal.)

2:8-4.8 Exceptions

(a) Exceptions to the standards set forth in this subchapter may be made for poultry provided the practices meet one or more of the following conditions:

1. The poultry are under the direct care of a veterinarian who can provide a medically supportable written explanation for the conditions; *and/or*
2. *[Poultry]* * To the extent permitted by law, poultry* may be confined in a vehicle or vessel for up to 28 consecutive hours without unloading for feeding and watering in accordance with 49 U.S.C. §80502.

- i. For purposes of determining this period of confinement,
time spent in loading and unloading is not included*.*

*[; and/or *

3. Poultry may be confined in holding cages or pens where feed and
water may be withheld for up to 24 hours in accordance with 9
CFR §313.2.

- i. For purposes of determining this period of confinement,
time spent in a vehicle or vessel shall not be included.]*

2:8-5.5 Marketing and sale

(a)-(f) (No change from proposal.)

*[(g) Animals not moved from an auction barn, transfer station or similar
location shall have access to water in holding pens, and if held longer
than 24 hours, access to feed in accordance with 9 C.F.R. §313.2(e).

1. These are maximum times without feed and water and are not in
addition to transportation times.]*

2:8-5.8 Exceptions

[(a)] Exceptions to the standards set forth in this subchapter may be made
for rabbits provided the *[practices meet one or more of the following
conditions:

1. The]* rabbits are under the direct care of a veterinarian who can provide a medically supportable written explanation for the conditions *[:]* *_*

*[2. Rabbits may be confined in a vehicle or vessel for up to 28 consecutive hours without unloading for feeding and watering in accordance with 49 U.S.C. §80502.

i. For purposes of determining this period of confinement, time spent in loading and unloading is not included; and/or

3. Rabbits may be confined in holding cages or pens where feed and water may be withheld for up to 24 hours in accordance with 9 C.F.R. §313.2.

i. For purposes of determining this period of confinement, time spent in a vehicle or vessel shall not be included.]*

2:8-6.5 Marketing and sale

(a)-(f) (No change from proposal.)

(g) Animals not moved from an auction barn, transfer station or similar location shall have access to water in holding pens, and if held longer than 24 hours, access to feed in accordance with 9 C.F.R. §313.2(e).

1. These are maximum times without feed *[and water]* and are not in addition to transportation times.

2:8-6.7 Exceptions

- (a) Exceptions to the standards set forth in this subchapter may be made for small ruminants provided the practices meet one or more of the following conditions:
 - 1.-2. (No change from proposal.)
 - 3. Small ruminants may be confined in holding cages or pens where feed *[and water]* may be withheld for up to 24 hours in accordance with 9 CFR §313.2.
 - i. For purposes of determining this period of confinement, time spent in a vehicle or vessel shall not be included.
 - 4. (No change from proposal.)

2:8-7.2 Feeding

- (a) (No change from proposal.)
- (b) *[BCS]* *Body condition* can be measured using one of the following methods:
 - 1.-3. By direct measurement using a weight scale, when available, or by indirect measurement using a weight tape, when available; or
- (c) Swine must have a BCS of at least level 2.0 using BCS-swine, provided, however, that a score lower than a 2.0 may be permitted for a reasonable period of time, if stage or level of production, physiologic conditions, or other factors results in such an appearance, during which

time the animals management is being altered to improve the condition.

1. For purposes of (c) above, a "reasonable period of time" refers to the amount of time it would be expected to take to restore an animal to an acceptable body condition, using diligent efforts to do so.

* [i. A score of 1.0 is permitted at market.]*

- (d) (No change from proposal.)

2:8-7.7 Exceptions

- (a) Exceptions to the standards set forth in this subchapter may be made for swine provided the practices meet one or more of the following conditions:

1.-2. (No change from proposal.)

3. Swine may be confined in holding cages or pens where feed
[and water] may be withheld for up to 24 hours in accordance with 9 C.F.R. §313.2.

- i. For purposes of determining this period of confinement, time spent in a vehicle or vessel shall not be included.

2:8-8.3 Complaints

- (a) (No change from proposal.)

- (b) The complaints shall be submitted in writing * or by phone, fax or e-mail* to the NJDA, the NJSPCA, county SPCAs or other State or local government authority~~*,*~~ *[, unless the nature of the information received is such that there appears to be imminent danger to the animal or public health, safety and welfare; or the complainant is incapable of complying with the requirement. Complaints can be made by phone, fax or email if either of these conditions exist.]*
- (c)-(h) (No change from proposal.)

2:8-8.4 Certification and role of a certified livestock inspector (CLI)

- (a)-(d) (No change from proposal.)
- (e) Only those persons certified as CLIs by the State Veterinarian and the Secretary of Agriculture may investigate complaints regarding the cruel or inhumane treatment of domestic livestock on behalf of the Department of Agriculture.
1. *(Reserved)*
- (f) (No change from proposal.)
- (g) A certified CLI shall *[only investigate complaints regarding those species of domestic livestock to which the State Veterinarian determines he or she has a demonstrated specialty]* *demonstrate sufficient knowledge and experience as to the type(s) of animals to be investigated*

1. The State Veterinarian shall find that a CLI has *[a demonstrated specialty]* *demonstrated sufficient knowledge and experience as to the type(s) of animals to be investigated* upon finding that:

i.-iii. (No change from proposal.)

- (h) (No change from proposal.)

2:8-8.5 Procedures for obtaining inspection of premises and records

- (a)-(c) (No change from proposal.)

- (d) If the inspecting authority determines that animals' lives are in imminent peril; that it would be fruitless to pursue a request for a voluntary inspection; that there is a possibility that the animals will be moved if advance notice is given; or that a consensual inspection otherwise is not practical, it shall not be necessary to make efforts to arrange for voluntary access to premises and inspection of animals or records before seeking a warrant *[if emergent circumstances require that the inspection occur immediately]*

- (e)-(k) (No change from proposal.)

2:8-8.6 Records of the complaint and inspection required and disposition thereof

- (a) Upon completing the inspection, the investigating authority shall provide the State Veterinarian with the results of the inspection. *This may be done by phone, e-mail, fax or in writing.*

1.-2. (No change from proposal.)

- (b) The investigating authority shall include in the records of the inspection forwarded *within seven days* to the State Veterinarian the following information:

1.-10. (No change from proposal.)

2:8-8.7 Actions on violations or other acts of cruelty

- (a) The following applies to minor violations:

1.-2. (No change from proposal.)

3. For subsequent minor violations, no written warning need be provided.

- (b) The following applies to severe violations:

1. (No change from proposal.)

2. Where severe violations of these standards are continuing, the

NJSPCA, county SPCAs or other State or local authority may:

i. (No change from proposal.)

ii. Bring an action in a court of *competent*

jurisdiction to allow it to confiscate the domestic

livestock from the person as allowed by N.J.S.A.

4:22-*[26]* * 26.1.*

3. (No change from proposal.)

Charles M. Kuperus, Secretary

New Jersey Department of Agriculture